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Current Topics.

Practice Books.

THERE ARE signs that the profession is becoming somewhat impatient on account of the delay in the publication of standard text and precedent books upon the new law of property. There is now but a very short period of time before the new Acts will come into operation, and naturally a new system of conveyancing which puts the legal profession, as it were, upon probation, demands that authoritative guidance shall duly be forthcoming to indicate the proper methods of proceeding. It is this demand that accounts for the wonderful reception given by two important branches of the profession to the series of lectures now being delivered by Mr. A. F. TOPHAM, K.C., and Sir BENJAMIN CHERRY, both of which series are published in THE SOLICITORS' JOURNAL weekly, and will be issued in book form at an early date by The Solicitors' Law Stationery Society, Limited. The appearance of such an important standard work of practice as "Wolstenholme and Cherry's Conveyancing Statutes," whose editor-in-chief is the chief draftsman of the new Acts, cannot, therefore, but be welcomed by every practitioner as an indispensable guide. It may seem to some persons sufficient to obtain only such books of precedents as "Prideaux," (the first volume of which we are assured will be ready before the Christmas vacation, and the second volume very shortly afterwards); but in view of the fact that the new statutes have such far-reaching effect on subjects other than real property, it is certainly advisable, if not absolutely indispensable, to have at hand such an authoritative exposition of the changes in substantive law as is given in "Wolstenholme."

Dismissal of Married Women Teachers.

AN IMPORTANT distinction is to be noted between provided and non-provided schools with regard to the appointment and dismissal of teachers, as far as non-provided schools are concerned, i.e., schools which are not provided by the local education authority, but which, on the fulfilment of certain conditions, may be entitled to financial assistance from the local educational authority. The power of appointing and dismissing teachers is vested primarily in the managers, the consent of the local authority being required in each case, except where the teacher is dismissed by the managers on grounds connected with the giving of religious instruction in the school (Education Act, 1921, s. 29 (2) (*c*)). The local educational authority has, however, the power to direct the managers to dismiss a teacher, but on *educational grounds* alone (*ibid*, s. 29 (2) (*a*)). The position with regard to "provided" schools, is however, materially different, and to such schools the provision of s. 148 (1) of the Education Act, 1921, will apply. According to s. 148 (1), a local educational authority may appoint necessary officers, including teachers, to hold office during the pleasure of the authority, and may assign to them such salaries or remuneration (if any) as they think fit, and may remove any of those officers. The powers of the local educational authority with regard to the dismissal of teachers in provided schools are therefore much wider than their powers in this respect, with regard to non-provided schools, and are not merely confined to directing the dismissal of the teacher on educational grounds. This point was clearly emphasized by the Master of the Rolls in delivering judgment in the recent appeal of *Short* v. *Borough of Poole*, *Times*, 21st November, 1925. There the local education authority, in pursuance of a policy of refusing to employ married women and dispensing with the services of teachers who had married and whose husbands were able to maintain them, was held by the Court of Appeal to have been acting within their legal rights in dismissing a teacher of a provided school, on those grounds. The Court of Appeal held that the authority had a discretion, with which the courts would not interfere, provided that the action of the authority was not *ultra vires*, nor its powers exercised corruptly or *mala fide*. The dictum of Lord SUMNER in *Roberts* v. *Hopwood*, 1925, A.C., at pp. 605, 606, seems very appropriate to such cases: "There are many matters," said Lord SUMNER, "which the Court are indisposed to question. Though they are the ultimate judges of what is

lawful, and what is unlawful to borough councils, they often accept the decisions of the local authority, simply because they are themselves unequipped to weigh the merits of one solution of a practical question against another."

It is interesting to note that in none of the cases referred to above was reference made to the Sex Disqualification (Removal) Act, 1919. Section 1 of that Act provides that a person shall not be disqualified by sex or marriage from "the . . . holding any civil . . . office or post, or from entering . . . or carrying on any civil profession or vocation . . ." It is submitted that had the point been taken, the result would not have been different, for the questions in these cases was not one of disqualification, but of dismissal in exercise of a discretionary power.

In *Curia Parliamenti.*

THE HOUSE of Lords has this week read a third time and passed the Moneylenders' Bill introduced by Lord CARSON. In the debate on the third reading, the House expressed general approval of the object of the Bill, but some members were prepared to express disapproval of some of its provisions. In particular, as Lord PHILLIMORE pointed out, "the more the moneylender is treated as a pariah and an enemy of the human race, the more he will be driven to charge everybody a higher rate of interest, and the more the honest, frugal man will have to pay." In moving the second reading of the Criminal Justice Bill, the Lord Chancellor expressed regret at the omission in the House of Commons of the clause abolishing grand juries at quarter sessions, and suggested the insertion in its place of a clause to the effect that in cases where the only charges remitted to quarter sessions were charges to which pleas of guilty had been made, bills might be found by the chairmen of quarter sessions without the summoning of grand juries. The Bill was read a second time. On Wednesday the House of Lords considered and carried a motion expressed in these terms: "That it is desirable that His Majesty's Government should consider the advisability of putting into operation the scheme declared to be practicable by the Betting Committee in 1923."

In the House of Commons the report stage on the Rating and Valuation Bill was concluded on Monday. On consideration of the Bill at this stage, *inter alia*, two particularly important subjects were discussed: (i) the position of Crown property. Mr. CHAMBERLAIN moved to leave out cl. 61, by which all property in the occupation of the Crown, used for public purposes, is chargeable in respect of rates, and the gross and rateable values of such property determined in accordance with the provisions of cl. 22 of the Bill. He urged the difficulty of giving practical effect to the new proposal, and pointed out the advantages of the present practice. In the event the Government amendment to omit the clause was carried without a division. (ii) The Rating of Agricultural Land. Considerable opposition was shown to the proposed deduction of 75 per cent. of the net value of agricultural land, and an amendment to delete the provision giving such deduction was carried. On Tuesday a number of new Bills were introduced in the House of Commons, among them being a Bill to amend the law relating to coroners. The remainder of the time on Tuesday was taken up with the Labour motion of censure on the Government for undertaking the Communist prosecution. The debate conclusively proved that the question was one of political expediency about which there might be two views and not one of legal right and wrong in respect of which there could be no dispute. On Wednesday the main work of the House was done in Committee of Ways and Means on the series of resolutions imposing safeguarding duties on certain articles, all of which had been recommended by the Committees of Enquiry concerned.

Grand Juries.

OPINIONS vary as to the value of the grand jury in the administration of our criminal law, and there will be disappointment felt in a good many quarters at the action taken by the House of Commons in deleting from the Criminal Justice Bill the clause which was to have provided for their abolition at any rate so far as Quarter Sessions were concerned. From all accounts of the procedure which is adopted before the grand jury, it would appear that no useful purpose is any longer served by that body. It is true that this institution has been in existence for about 1,000 years, but its original functions consisted in making presentments of crimes, of which, it was itself cognisant. This function still remains, but is nowadays seldom exercised, if at all. When a prisoner has been committed by justices or on a coroner's inquisition, it would appear quite unnecessary that the verdict of a grand jury should be interposed between the prisoner's committal and his arraignment and trial. The function of the grand jury in such cases would appear to consist of the doing very badly that which has already, in most instances, been done well; for the grand jury hear the evidence of the prosecution alone. To the argument that the grand jury is a bulwark in favour of the prisoner, to save him from being put on trial, in cases where the charge is entirely baseless, and the prisoner has been committed on insufficient evidence, owing to, perhaps, the inexperience and ignorance of the committing justices, the answer to be made is that the grand jury is no bulwark at all, nor are the grand jurors likely to be more competent and experienced than the justices themselves. In the majority of cases, it will be found that the justices have done the right thing in committing the prisoner for trial. If any fears are entertained on this score, it would appear better to make some alteration in the procedure before the committing justices, instead. Thus a provision might be made that the charge against the accused should not be investigated by less than three justices, and that he should not be committed for trial, unless there was a majority of at least two justices in favour of the committal. The suspension of the grand jury system during the war has provided conclusively, that the services of a grand jury can profitably be dispensed with, and even if individuals might on occasion profit by their retention, it should be remembered that justice cannot be measured out equally to all, and that the balance of convenience therefore demands its total abolition.

Permissible Advocacy.

IN THE trial of the Communists there was a sharp passage between Mr. Justice SWIFT and counsel representing one of the prisoners, as to the latter's right to quote from a speech made by an eminent man. Counsel's object was to show that his client had done no worse than the gentleman in question, who had not been prosecuted, and as an authority for such an argument being admissible, he referred to ERSKINE'S speech in defence of TOM PAINE when he was tried in 1792 for the publication of the "Rights of Man." The report of the trial will be found in vol. 22 of the State Trials, col. 357. ERSKINE'S speech, occupying sixty columns of the volume and extending to the greater half of the report, did not err on the side of brevity, and counsel in the Communist case was justified in quoting it as a precedent for his line of argument. For, apparently without objection from the Attorney-General and Solicitor-General (Sir A. MACDONALD and Lord ELDON), against him, or from Lord KENYON, the judge, ERSKINE quoted extensively from various writings and speeches, especially those of BURKE, to show that his client had merely expressed the same ideas in his book. Thus (cols. 461-2), "with respect to the two Houses of Parliament, I believe I shall be able to show you that the very person who introduced this controversy, and who certainly is considered by those who now administer the government as a man usefully devoted to maintain the constitution of the country in the present crisis, has himself made remarks upon these assemblies that upon comparison you will think more severe than Mr. PAINE'S"—and he proceeded to the comparison. It is to be noted,

however, that PAINE was found guilty by the jury without troubling the Attorney-General for his reply, and the law officers, confidently anticipating this result, might not have deemed it worth while to make any objection to ERSKINE'S tactics. As to the merits of them, the fact that A has apparently done worse with impunity is obviously not evidence on an indictment against B, and it can only go to the law if A has been tried on the facts stated, has been acquitted, and his case has been reported or authentically quoted—in which circumstances it may of course be correctly cited in argument in the usual manner. Otherwise the argument that, because A has stolen two loaves with impunity, B must be acquitted for stealing one is manifestly unsound, and the judge's ruling may be respectfully commended. As to precedents of advocacy, certain eminent counsel have expressed their personal belief in their client's innocence in defence, but it does not follow that it is the right thing to do.

The Publication of Proceedings at Preliminary Investigations.

THE WIDESPREAD interest which has been aroused by the recent proceedings in the Uckfield Police Court gives rise to a question of considerable importance. Is it advisable in the interests of justice, that publicity should be given to preliminary proceedings before magistrates? The object of a preliminary investigation is to decide whether there is enough evidence against the accused to justify his being tried, and should the magistrate decide that there is, the accused is committed to take his trial by a jury of twelve of his countrymen at the next Assizes or Quarter Sessions; in the event of the magistrate deciding otherwise, the accused is discharged. An accused person, therefore, cannot properly be said to be on his trial until he appears before judge and jury, and it is the function of the jury alone, having heard the evidence both against and in favour of the accused, to decide upon the facts before them, whether he be guilty or not of the offence alleged against him. It is the duty of a modern jury to give a "true verdict according to the evidence" and therefore to enter the jury-box with open and unbiassed minds, but how can they do so if, for several weeks before the trial, they have read every detail of the preliminary proceedings and have discussed the case with their friends? Jurymen are only human after all, and it will be vain for counsel and even for the learned judge to tell them to wipe out from their minds anything that they may have read or heard about the case, and to consider it only in respect to the evidence submitted to them at the trial. Subconsciously each one of them has already formed his own opinion from the newspaper reports of the police court proceedings and as the accused's name is called, and he appears in the dock, each member of the jury suppresses a very natural excitement to see in the flesh the person with news of whom for the past three or four weeks the newspapers have been filled. "Here he is," thinks each one "Here is the man who has *done* so and so." In such circumstances, what chance is there for the accused to have a really fair trial? Would it not be better, in the interests of justice, that preliminary proceedings at police courts should not be reported in the press at all, or, at any rate, be confined merely to a statement that a person accused of a certain offence was either committed for trial or discharged? Report the *trial* by all means; the more the public are made acquainted with the administration of justice the better. The publicity given to sentences imposed upon criminals is one of the greatest deterrents to crime; and for the same reason, it is an excellent thing that summary convictions at police courts should be reported. But surely the practice of reporting preliminary police court proceedings should be checked. Magistrates have the power to exclude the public from preliminary investigations; would it not be advisable for them to exercise it more frequently, not only with regard to the public, but also with regard to the press?

The Clerk of the Peace.

(*Continued from p.* 120.)

Moreover, there would appear to be another material difference with regard to the ground of removal in each case. At the time of the passing of the Local Government Act, 1888, the ground on which a clerk of the peace was removable was not only that of misconduct in the execution of his office, but also misconduct, which though not in the execution of his office, was, nevertheless, such as the justices considered rendered the individual in question unfit to fill the office. Now, although the Act of 1888 made an alteration in the method of removal in the case of new clerks appointed after that Act, it did not in any way affect the grounds of such removal. Reference on this point may be made to the judgment of Lord Justice BANKES, when this case was before the Court of Appeal. "In my opinion," said the learned Lord Justice (1925, 1 K.B., at p. 252), "s. 83, when dealing with the duties, appointment and removal of clerks of the peace appointed after the passing of the Act, is dealing not with a new office created by the Act, but with the old office of clerk of the peace, the well-known office of that name. It was the definite article: 'The Clerk of the Peace . . . shall also be Clerk of the County Council.' It, indeed, goes on to say that he shall be appointed by the standing joint committee, instead of the *custos rotulorum*, as before, and that he shall be removable by the same committee instead of by the quarter sessions, but the terms on which he is to be appointed, and the grounds upon which he is to be removable, are the terms and grounds incident to the old office."

It now becomes necessary to refer to the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). By that Act the Clerks of the Peace Removal Act, 1864, is repealed, "except as to any clerk of the peace appointed before the passing of the Local Government Act, 1888." This curious result therefore follows, that while a clerk who has been appointed previous to the Local Government Act, 1888, is removable (*a*) on the ground of misconduct in the execution of his office by virtue of the Act of 1688 (1 W. & M. c. 21), and (*b*) on the ground of misconduct not in connexion with an office, in the cases provided for by the Act of 1864 (51 & 52 Vict. c. 41), a clerk, on the other hand, who has been appointed subsequently to the Local Government Act, 1888, is only removable on the first ground (*a*), *supra*, inasmuch as the Act of 1864 has been repealed by the Statute Law Revision (No. 2) Act, 1893, as far as such appointments are concerned. In this connexion reference may be made to the following passage in Lord BUCKMASTER'S judgment: "Finally, it is said that the Statute Law Revision Act of 1893 has repealed the Act of 1864, and that this could only have been done upon the assumption that the powers given by that Act were all merged in the wider powers conferred by the Act of 1888. I am not prepared to assent to the proposition that one Act of Parliament can be construed by considering the terms of a later statute, and more particularly where that statute is merely one of Statute Law Revision. It is, indeed, suggested that the repeal is of no effect, but neither can I accept this view. I think there has been a mistake which it would be well to remedy, but I decline to rectify that mistake by changing the whole tenure of an office such as that of clerk of the peace."

Attention might usefully be drawn to the argument advanced, that the appointment to the office was never a valid one, inasmuch as the power of appointment had not been properly exercised, on the ground that if the office was a freehold office for life, the appointment thereto must necessarily have been bad by reason of the insertion of a provision whereby six months' notice on either side might be given to terminate the appointment. In support of this contention the case of *Rex* v. *Owen*, (4 Mod. 293,) was cited. There, one OWEN, a clerk of the peace, was appointed "during

the pleasure of the *custos rotulorum*," and not for life as provided by the Act of 1 W. & M. c. 21. The *custos* who appointed OWEN died, and a new *custos* was appointed by the King, who thereupon appointed a third person to fill the office. The court held that inasmuch as the above-mentioned Act provided that the appointment of clerk of the peace was to be made " for so long as he shall well demean himself," *i.e.*, for life during good behaviour, any other kind of appointment would be bad, and that in the circumstances the appointment of OWEN was void. The House of Lords, however, distinguished *Owen's Case* in *Lord Leconfield* v. *Thornely*, inasmuch as in the latter case the actual appointment was perfectly good, there having been merely added thereto, by the insertion of the above provision as regards notice, a bad though easily severable condition. They accordingly held that the appointment was good.

The fundamental fallacy underlying the appellant's arguments in *Lord Leconfield* v. *Thornely* was that the joint committee had contracted for the services of an officer, instead of merely exercising their powers of appointment to an office, which was the correct view of the case. S.

(*Concluded.*)

Landlord and Tenant Notebook.

Tenant for a Term Certain and the Rent Restriction Acts.

As doubts appear sometimes to be expressed as to the exact position of a tenant for a term certain of premises coming within the provisions of the Rent Restrictions Act, at the expiry of the original term, I would refer my readers to the decision of the Court of Appeal in *Felce* v. *Hill*, 39 T.L.R. 673. There the tenant held over after the expiry of his term, paying the same rent as before. Subsequently a notice of increase of rent was served on him by his landlord, but the tenant objected that no increase was recoverable, inasmuch as no notice to quit had been served. The issue, therefore, was whether the tenant became a yearly tenant or merely a statutory tenant after the expiration of his original term. In such cases, the cardinal principle to be remembered is that it is largely a matter of evidence as to what the true position of the tenant is. Ordinarily when a tenant for a term certain holds over, he becomes a tenant on sufferance, or, perhaps, a tenant at will; but once the landlord receives payment of rent from the tenant the implication arises in most cases that a tenancy from year to year or other periodic tenancy is created. But where you have premises which are protected by the Rent Acts, the contractual tenant whereof is entitled, even against the will of his landlord, to continue in possession, but is at the same time obliged to pay rent to his landlord, then quite different considerations arise, and the inference of the creation of a new tenancy is not to be drawn merely from the fact of payment and acceptance of rent. As Lord Justice Warrington put it in his judgment in *Felce* v. *Hill*, *supra*, the payment and acceptance of rent is not referable to any intention to create a tenancy from year to year, but to the fact that the tenant is holding over as a statutory tenant under the Act, and is bound to pay the rent. The proper inference to be drawn in such cases is, therefore, that the tenant for a term certain of premises coming within the Rent Restrictions Acts, automatically becomes a statutory tenant on the expiry of the original term, and still continues in occupation as a statutory tenant, notwithstanding the subsequent payment and receipt of rent, in the absence of evidence to the contrary that the intention of the parties was to create a contractual tenancy, the onus of proving which rests on the tenant.

Greater Hardship and Possession.

Where a landlord seeks to obtain possession of premises, within the Rent Restrictions Acts on the ground, *inter alia*, that he requires the premises for his own occupation, the first question to be considered, is the date when he became the landlord. If he became the landlord subsequently to the 5th May, 1924, he can only proceed under para. (*d*) of s. 4. "5" (1) of the Rent Act, 1923, in which event, he must, *inter alia*, prove that alternative accommodation is available, but if he became the landlord prior to that date, it is open to him to proceed either under that paragraph, or alternatively under the Prevention of Eviction Act, 1924. In the latter event, it is not essential to prove the existence of alternative accommodation, but, on the other hand, it is necessary to satisfy the court that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it. Now what are the matters which are to be taken into consideration in general in determining this question? One must consider firstly, the amount of accommodation in the premises required by the landlord and in the premises in which he is in actual occupation at the date of the hearing, and the inconveniences, if any, that the landlord is experiencing; secondly, the members of the landlord's family usually residing with him, and the members of the tenant's family, and one must pay special attention to any children, and invalids, constituting their respective families; thirdly, the respective financial position of the parties, and any financial loss which the landlord is suffering through being unable to obtain possession; fourthly the availability of alternative accommodation for the tenant, for although it is not essential to prove the existence of alternative accommodation, the court is, notwithstanding, expressly entitled by the Prevention of Eviction Act to take this factor into consideration; fifthly, whether the landlord is the owner of other property, of which he might more easily and with less inconvenience to the tenant of such property, obtain possession. These are in general the points to be considered with regard to greater hardship, although there are no doubt several others which the particular facts of each case may suggest for careful consideration.

S.

A Conveyancer's Diary.

Condition as to Rescission in a Contract for the Sale of Land.

The general law governing the construction of a condition reserving to the vendor the right to rescind a contract for the sale of land may be briefly summarised as follows: The condition in its usual form only extends to objections or requisitions that are made upon the title disclosed in the abstract, or objections or requisitions that arise therefrom: " . . . the power is a power to rescind if an objection is taken to the title which the vendor has thought fit to disclose": per Bramwell, J., in *Gray* v. *Fowler*, 1873, 8 Ex. 249, at p. 266. It does not enable the vendor to get out of his contract if and whenever he does not want to complete. Thus, the vendor cannot rescind and thereby escape an action for damages, where he has no title at all: *Bowman* v. *Hyland*, 1878, 8 Ch. D. 588; or where he has sold a part of the property with knowledge that he had no title to that part: *Re Jackson and Hayden*, 1906, 1 Ch. 412. The unwillingness to complete must not be arbitrary, or capricious: see per P. O. Lawrence, J., in *Merrett* v. *Schuster*, 1920, 2 Ch. 240, at p. 249; and see also *Re Davies and Wood*, 1885, 29 Ch. D. 626, 630; but it must be characterised by reasonableness and good faith. This is illustrated by the recent case of *Re Des Reaux and Setchfield*, 70 SOL. J. 137, where a vendor tenant for life was held not entitled under cover of such a condition to refuse to apply for

the appointment of trustees for the purpose of the Settled Land Acts to receive the purchase money.

Where vendors as trustees contracted to sell and reserved to themselves the usual right to rescind, on its appearing that they had no power of sale and their offering to convey as legal personal representatives—which offer the purchaser refused—they were held entitled to rescind the contract: *Re Milner and Organ*, 64 Sol. J. 463. Where a purchaser alleges that the property is subject to a restrictive covenant, and the matter is in doubt, or the restriction cannot be removed, the vendor can take advantage of the condition and rescind the contract without incurring liability under it: see *Procter* v. *Pugh*, 1921, 2 Ch. 256.

The purchaser cannot at once repudiate the contract on the ground that the vendor has failed to show a good title on the face of the abstract, and thus render inoperative the term of the contract reserving the right to rescind: see per Sargant, J., in *Procter* v. *Pugh*, *supra*, at pp. 267-268. If the condition is to the effect that the right to rescind accrues if the purchaser "makes" such a requisition, the right arises when the requisition is actually delivered: *Re Starr-Bowkett Building Society, &c.*, 1889, 42 Ch. D. 375; and the vendor may lose his right to rescind by delivering an answer to an objection or requisition. But if the condition gives the right to rescind where the purchaser "insists" or "persists," an answer of course does not destroy the vendor's right: *Torpin* v. *Chambers*, 1861, 29 Beav. 104. In practice the loss of the right to rescind in such cases is guarded against by the insertion of such words as "notwithstanding any intermediate negotiations": see, for example, Statutory Conditions of Sale, 1925 (issued by the Lord Chancellor under s. 46 of the Law of Property Act, 1925, and made applicable by that section to contracts by correspondence unless actually excluded by such correspondence). An important provision contained in s. 42 (8) of the Law of Property Act, 1925, should be carefully noted. That sub-section enacts that a vendor is not to have any power to rescind a contract by reason only of the enforcement of any right under s. 42 of the Law of Property Act. Further, under s. 125 of the same Act, a vendor is debarred from exercising his power to rescind if the purchaser insists (as he has a right to do under that section) on a power of attorney or an office copy thereof being delivered to him free of expense.

LAW OF PROPERTY ACTS.
Points in Practice.

In this column questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Manager, "The Solicitors' Journal," Oyez House, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only, and be in triplicate.

Vendor—If Bare Trustee.

46. *Q.* Will it be necessary for a purchaser to enquire whether his vendor is a bare trustee; and, if so, and the bare trustee does not hold on trust for sale to require the person entitled to call for the legal estate to join in the conveyance?

A. A requisition as to whether the vendor was a bare trustee, and therefore one who ought not to sell without the consent of the equitable owner, if made now, would, no doubt, be met by the usual reference to *Ford* v. *Hill*, 1879, 10 C.D. 365. Such a vendor might, however, give a purchaser a good title if the latter had no notice of the equity. On 1st January bare trustees are divested of their legal estates by virtue of the L.P.A., 1925, 1st Sched., para. 2 (2), and it shifts to the person entitled to call for it under para. 2 (3). Thus a bare trustee no longer will be able to make a good title, and the requisition would in effect be, is this an honest sale? And, no doubt, the reference to *Ford* v. *Hill*, in the answer would be correspondingly sharper. A theoretical difficulty does exist, however, for someone with a perfect paper title might have been a nominee of the person paying the purchase-money on the last sale. If dishonest he could therefore sell, and the purchaser would no longer be protected by the legal estate from an equity of which he had no notice. Coming to actualities, those who buy property and have it conveyed to other people almost invariably employ their own solicitors for the transaction, and the latter know all the facts, and hold the deeds for their clients. A statement, therefore, by the solicitors who acted on the last purchase for value, put in the form of a statutory declaration if desired, that, to the best of their knowledge and belief, the then purchaser used his own money on that occasion, should reasonably ensure safety. Such a statement, if required, should of course be procured before the contract. No doubt at first honest mistakes are also possible, and a tactfully framed requisition, pointing out the possibility, may prevent them. See also answers by Sir Benjamin Cherry, 70 Sol. J., p. 124 (*Q.* 3, *Q.* 6).

Copyholds Held on Non-renewable Lives.

47. *Q.* A client holds property on three lives and a ground rent of £5, with no right of renewal. Has he a right to enfranchise the property, and, if so, on what scale?

A. Copyhold property held for lives, not renewable, is dealt with in s. 133 of the L.P.A., 1922. By the combined operation of that section and s. 145 and the 15th Sched., para. 7 (3), the interest in question is converted into a leasehold interest for ninety years, but determinable and subject as therein mentioned. This will apply to the ground rent if held on the same tenure.

Undivided Shares—Public Trustee—New Trustees.

48. *Q.* The fee simple estate in land is held in two undivided equal shares. One share is vested in A beneficially. The other share is vested in B upon trust for sale, and to hold the proceeds upon the trusts of a settlement purposely kept off the title. Under the settlement C is entitled to a life interest in the income of this share. There are no incumbrances. Apparently under para. 1 (4) (iii) of Pt. IV of the 1st. Sched. to the L.P.A., 1925, A and C will be able to appoint trustees in whom the entirety will vest under the statutory trust. This, however, will necessitate bringing the settlement on the title. What steps can be taken to oust the Public Trustee without going to the court and without bringing the settlement on the title?

A. There does not seem to be any royal road out of the *impasse* suggested. Having regard, however, to s. 27 (1) of the L.P.A., 1925, a purchaser from the trustees appointed by A and C will not be concerned with the trusts of the purchase moneys, so the introduction of the settlement on the title can hardly give rise to complications. The purchaser and his assigns will be able to verify C's interest in the second moiety, and, if that is clear on the face of the settlement, or otherwise from the facts, no further requisition will arise. With a suitable recital on the appointment of trustees for sale by A and C, the settlement will disappear from the title after twenty years by virtue of s. 45 (6) of the L.P.A., 1925, re-enacting s. 2 of the Vendor and Purchaser Act, 1874, for this purpose.

Sole Legal Personal Representative.

49. *Q.* Having regard to s. 12 of the A.E.A., 1925, will it always be necessary in future when a man dies intestate leaving a wife (or *vice versa*) that administration should be granted to two persons?

A. Not unless a life interest arises, i.e., unless the estate, less debts, funeral and testamentary expenses, and the value of the personal chattels, exceeds £1,000. See s. 46.

50. *Q.* In the case of a testator who leaves all his property to his wife for life and appoints her sole executrix, we take it it will not be necessary to appoint an additional personal representative?

A. No. See answers to Questions 17, p. 40, and 30, 31 and 32, p. 94, *supra*. To deal with the realty after the estate is cleared the widow's proper course is to appoint a co-trustee under s. 30 (3) of the S.L.A., 1925.

CAPITAL MONEY—DEFINITION IN L.P.A., 1925.

51. *Q.* The expression "capital money" is used in various places in the L.P.A., *e.g.*, s. 18, but on reference to s. 205 for the definition the only word defined beginning with "C" is "conveyance" (which, although the arrangement apparently purports to be alphabetical, comes between "Bankruptcy" and "Building Purposes"). Is the meaning the same as that in s. 117 (1) (ii) of the S.L.A., 1925?

A. Yes, see s. 205 (1) (xxvi) under "tenant for life," where eleven other words and phrases beginning with various letters of the alphabet are grouped together and defined by reference to the S.L.A., 1925. That "capital money" should be defined under the letter "T" may be a surprise for the practitioner, but he will have to keep it in his memory. Note also "conveyance" under "disposition" in S.L.A., 1925, s. 117 (1) (v), and a similar "omnibus definition" in s. 68 (15) of the T.A., 1925.

RESTRICTIVE COVENANTS.

52. *Q.* We are solicitors for several estate owners who obtain from each of their purchasers a covenant to observe and perform certain restrictive covenants and stipulations. (*a*) Is it the duty of the covenantor or covenantee to register a covenant restrictive of the user of land? (*b*) If it is the duty of the covenantee to register, and he is the owner of a large area of land intended to be sold in plots and all the plots to be sold subject to the same restrictions, can he register the restrictions once for all the land? (*c*) If so, how would a variation of the restrictions have to be dealt with? (*d*) If such conveyance must be registered, when can the registration be made? Before completion no covenant may have been entered into, and therefore nothing is registrable: s. 10 (1), Class D (ii), of the L.C.A., 1925. If completion has taken place before registration is effected the purchaser takes free from the restrictions: s. 13 (2). (*e*) If it is the duty of the covenantee to register, can he recover the expense from the covenantor? Section 12 (1) does not appear to help in this case. (*f*) What would be covered by the word "experses" in the last-mentioned section, *e.g.*, the actual fees paid only, or the solicitor's charges in addition?

A. See generally as to restrictive covenants, the answers to questions 13 and 14, *ante*, p. 22. (*a*) There is no *duty* upon anybody to register the covenant (unless the vendors are trustees and owe the duty to their beneficiaries), but if the covenantee fails to register, he may soon lose the benefit. It is clearly therefore to his interest to register. (*b*) Plainly, the only covenants which can be registered are those existing, not hypothetical or contemplated. (*c*) The covenant as varied will be registrable, and the machinery will no doubt be created by the rules to be made under s. 19 of the Act. (*d*) The immediate purchaser cannot, of course, take free from his own covenant, whether it is registered or otherwise. If there was inordinate delay in registration a purchaser from him might do so. The questioner appears to contemplate the completion of a sub-purchase before registration is possible, but obviously a search made just before application for registration could be made, to the knowledge of the party searching, would be fraudulent and would not protect him. Or, put in another way, although the sub-purchaser would not be bound by his knowledge of the unregistered covenants by reason of s. 13 (2) of the L.C.A., 1925, and s. 199 (1) (i) of the L.P.A., 1925, yet he would be bound within s. 199 (1) (ii) by his knowledge of the fact that there had been no time to register them. And no doubt the internal working machinery of the Registry will ensure protection directly an application to register is made. (*e*) No, not without a special bargain. (*f*) No doubt in accordance with the usual practice, expenses would cover necessary attendances at the Registry.

The Law Society.

LAW OF PROPERTY ACTS LECTURE

(Fifth of the Series),

BY SIR BENJAMIN CHERRY, LL.B.,

ON WEDNESDAY, 2ND DECEMBER, 1925.

[*Verbatim Report.*]

QUESTIONS AFTER LECTURE No. 4.

By Mr. J. J. BROOKHOUSE.

1. *Q.* Can a receipt endorsed on a mortgage (under s. 115, Law of Property Act), be signed as an escrow?

A. According to the description of an "escrow" in Norton on Deeds, any instrument can be delivered as an escrow. From *Davis* v. *Jones*, 1856, 25 L.J., C.P. 91, it appears that an undated agreement for a lease, not under seal, can be executed as an escrow. In *Lloyds Bank* v. *Bullock*, 1896, 2 Ch. 192, it was held that a receipt under seal by a building society could be executed as an escrow. I think the practice under s. 115 will be to execute receipts under seal, save in the case of unincorporated building societies. It will make no difference to the stamp. Hence there should be no difficulty about executing an escrow.

2. *Q.* Such receipt not being a receipt for consideration money endorsed on a deed (*i.e.*, not a receipt by the grantor to whom the consideration passes under the deed) does it authorise a solicitor to receive the money without any other authority from his client (ss. 67, 68 and 69, Law of Property Act)?

A. If the receipt is taken under seal it will come within s. 68 and protect a purchaser. Similarly it will under s. 69 operate as an authority to the solicitor producing it to receive the money.

3. *Q.* Is it therefore necessary *in strictness* for either (1) the mortgagee to attend every completion personally to sign the receipt, or (2) the mortgagee's solicitor to receive money under a specific authority and give an undertaking (and the mortgagor to accept it) to obtain his client's signature to the receipt?

A. These points do not arise if the receipt is taken under seal. If it is not taken under seal, on the language of s. 69 it would give the solicitor the required authority, but I do not advise this course to be taken.

By Mr. HENRY LAMONBY.

4. *Q.* In the year 1926 a purchaser of freehold land insists on the conveyance thereof being in the form now in use. What will be his legal position?

A. Speaking generally, he will not suffer. The Acts, so far as possible, have been made foolproof. I do not advise the profession to take advantage of this, for it will not be in their interests to do so.

By Mr. M. W. EWINS.

5. *Q.* In view of the fact that upon payment of money under a mortgage the mortgage term becomes satisfied and therefore merges in the freehold, what is the actual effect of the receipt endorsed on the mortgage deed? Is this necessary as a *reconveyance*, in view of the fact that apparently immediately upon payment off, the mortgagee has no estate left in him to reconvey?

A. No reconveyance is required. The endorsed receipt operates as a surrender of the mortgage term, and the usual covenants by the mortgagee against incumbrances are therein implied. If a mortgagor pays off a mortgage without taking an endorsed receipt he will have considerable difficulty in proving that the mortgage has been duly discharged.

6. *Q.* Presuming a mortgage has been paid off but no receipt has been endorsed on the deed, what would be the

effect of a conveyance (*a*) by the mortgagor, and (*b*) by the mortgagee expressed to convey under his statutory power ?

A. (*a*) If the mortgagor recovers the deeds he will be able to make title provided that the mortgagee has not previously conveyed the land to a purchaser. (*b*) If the deeds are left with the mortgagee he will be able to make a title to a purchaser in good faith under the Law of Property Act, 1925, s. 104. It does not matter that he has lost his mortgage terms (if any); he can convey the fee simple or head term.

By Mr. E. Stanley Jones.

7. *Q.* Would not a recital that the vendor was "beneficially" seised in fee simple in possession "free from any trust" obviate any need for a statutory declaration to prove that there is no secret trust ?

A. This does not carry the matter any further. If there was no secret trust on 1st January, then the vendor *ex hypothesi* would be seised. If there was a secret trust then the usual recital of seisin would be just as wrong as the proposed variation. As a general rule, a reply stating that there was no secret trust will be accepted without a statutory declaration; at any rate, if the vendor undertakes to furnish one at the purchaser's expense if called on to do so.

By Mr. H. G. Thompson.

8. *Q.* It is now quite a common practice for estate agents when arranging a lease for over three years to prepare an agreement for a lease, presumably to save legal costs. The case of *Walsh* v. *Lonsdale* has encouraged this practice. Do the new Acts affect the position, and, if so, in what way ?

A. The Acts do not affect the point save that a land charge should be registered to protect the agreement.

9. *Q.* At the present time, one often accepts a conveyance by an owner entitled in fee simple, subject to an annuity or jointure, an annuitant on joining in to release her interest, and the vendor covenanting to discharge duties arising on death of annuitant. Again, a purchaser often takes a conveyance from tenant for life and remaindermen when there are no Settled Land Act Trustees, with a similar covenant as to death duties. I understand that in either case after 1925 difficulties may arise under the new Acts when the purchaser is selling, and that trustees will have to be appointed. Is this so, please ?

A. It will be expedient after 1925 to join an annuitant or jointress in a conveyance; a purchaser has a right to object to title being made by bringing equitable interests on to the conveyance. No doubt he will insist on his rights. Why should he be bothered with the duties payable on the cesser of the annuity ? Remember that the title to land is approximated to the title to stocks and shares and these matters will then appear simple. Either the jointress or the annuitant must release her interest separately before completion or title must be made under the Settled Land Act. After 1925 no title can be made to land by a tenant for life and remainderman. This is an objectionable and unnecessary practice under the existing law. The tenant for life will have the fee simple vested in him, and the purchase money must be paid to Settled Land Act trustees before he can make title. This remark does not apply where the land is held on trust for sale, here the trustees for sale make title. A purchaser will have nothing to do with the trusts of a settlement of land, any more than a purchaser of stocks and shares from the trustees of a personalty settlement is concerned with the trusts of that settlement.

10. *Q.* It is not now the usual practice to include in acknowledgments of right to production etc. of documents, probates and letters of administration, as these are considered documents of record. In view of the Administration of Estates Act, 1925, should these be included in future acknowledgments ?

A. Yes, after 1925 probates and letters of administration should be included in acknowledgments of documents on account of the endorsements thereon which will not be recorded at Somerset House; see the General Conditions of 1925.

By Mr. Carey, Mr. Butler, Mr. Vyvian Wells and Mr. Hives.

11. *Q.* If a builder agrees to grant a lease for ninety-nine years at a premium, must the lease be prepared by the lessee's solicitor under Law of Property Act, 1925, s. 48 ?

12. *Q.* The lessor's solicitor is entitled to furnish a form and charge a fee therefor; if the lessor stipulates that the lease shall be in a form prepared by his solicitor, the costs would, it is suggested, fall on the lessee, who would be liable to pay the scale fee. Is there any objection to the lessor stipulating that the lessee shall pay a fixed fee to the lessor's solicitor for the preparation of the lease in place of the scale fee ?

13. *Q.* Can the lessor's solicitor charge for preparing the draft or only for a form from which the lessee's solicitor must prepare a draft ?

14. *Q.* If nothing is said as to costs, can the lessor's solicitor charge the lessee for the preparation of the lease ?

A. 11 to 14. "Sale" means a sale properly so called: s. 205 (1) (xxiv). The transaction described is not a "sale." Section 48 (1) speaks of "the sale of any interest in land." *Primâ facie* that does not mean the creation of a new interest in land, such as a term of ninety-nine years. That sub-section brings a sale "effected by a demise or sub-demise" within its scope, to meet the case where part of the land affected by a rent is sold, and "the sale properly so called" is carried out by a demise for, say, 2,000 years, or a sub-demise for a term, reserving only a nominal reversion, so as to leave the head rent payable by the vendor till he sells the rest of the land subject to and with the benefit of the term or sub-term previously created. The grant of a lease at a premium is not *primâ facie* a sale, but a lease. It will usually be expedient to reserve a small ground rent. The other questions do not arise. The case is governed by s-s. (3).

By Mr. M. C. Batten.

15. *Q.* M & E were tenants in common in equal shares of freehold property. M died in 1923, having appointed B her sole executor, who proved the will. She devised her share in the freehold equally between W and S. The executor has not assented to the devise. E died in 1924, having by her will appointed the said W her sole executor and sole residuary devisee. He has made no assent in his own favour. In whom will the legal estate vest on the 1st January, 1926 ? Should B and W execute a vesting assent to themselves as trustees for sale ?

A. On the 1st January the first moiety is vested in one executor and the second in another. The entirety, not being vested in the same persons, will vest in the Public Trustee on the statutory trusts. No vesting assent is required.

Questions submitted by a body of Tunbridge Wells Solicitors.

16. *Q.* (1) Three vendors purport to have been seised, immediately before the 1st January, in fee simple as tenants in common. No incumbrances on undivided shares are disclosed by the abstract. It is conceived that:

(*a*) If in fact there were then no such incumbrances, the purchaser will obtain the legal estate, and a good title, under a conveyance by the vendors as trustees for sale: (Law of Property Act, 1st Sched., Pt. IV, para. 1 (2)) ?

A. Yes.

(*b*) If, however, there were then any incumbrances (even an agreement of charge, without deposit of deeds, overlooked by the parties, and not known to their solicitors), title can only be obtained from the Public Trustee, or trustees appointed in his place: (*ibid.* para. 1 (4)) ?

A. Yes, but the equitable chargee would have to give notice of his charge to the Public Trustee or it would be defeated by a conveyance by him.

(2) Must a purchaser make a requisition as to whether there are in fact any undisclosed incumbrances ?

A. In such cases, yes.

(3) Does the principle of *Re Ford and Hill* apply ?

A. If the vendor's solicitors raise this, it can be got over by requiring them to ask their clients personally whether they know of any charges. *Ford and Hill* only applies to protect the purchaser's solicitors from insinuations that they have improperly omitted to abstract something material which is known to them.

(4) If not, should the purchaser require any and what statutory declarations or other evidence of actual freedom from incumbrances ?

A. This is a question I have already answered.

By Messrs. RASHLEIGH & Co.

17. *Q.* What is the proper practice with regard to drawing the vesting deed under the new Act in cases where the tenant for life and the trustees are represented by separate solicitors, that is to say, whose business is it to draw the vesting deed, the tenant for life's solicitors or the trustee's solicitors ?

A. The draft should generally be prepared by the solicitor acting for the tenant for life, as he ought to have the deeds. The draft should be submitted to the solicitors acting for the trustees.

By Mr. J. A. SKELTON.

18. *Q.* A is registered as proprietor with an absolute title to land. He has executed an undisclosed declaration of trust that he holds the land as trustee as to one third share for B, another third share for C, and the remaining third share for D and himself, A, in equal shares. D has recently died, and his bankers are the executors and trustees of his will. Arrangements have been made for the sale of the land, and a draft contract for sale by A as vendor has been submitted to the purchaser. It is possible that the completion may not take place until the new year.

If a requisition is raised whether A holds the land on a secret trust, and the purchaser is informed, as he will be, of the facts—

(*a*) Will it be necessary to have a vesting deed in favour of A and the other owners, as joint tenants, upon the statutory trusts ? or

(*b*) Should another trustee be appointed with A ?

(*c*) Does the fact that the land is registered with an absolute title under the Land Registration Act affect the question ?

A. No vesting deed is required in the case of a trust for sale. A registered proprietor can make title, subject to complying with any restrictions or other entries on the register. Where the title is registered, the proprietor is deemed to have the legal estate vested in him : Land Registration Act, 1925, s. 69. He can make title under s. 18. The purchaser will obtain a good title under s. 20 when he is registered.

In order to give effect to the title off the register, A ought (Trustee Act, 1925, s. 36) to appoint an additional trustee to act with him and in the appointment they should declare that they hold on trust for sale. He should then by a registered disposition transfer the land to himself and his co-trustee. A purchaser is not concerned with the title off the register.

19. *Q.* A conveyance of a building estate has been taken in the name of A, who has executed a declaration of trust that he holds the land in trust *as to one moiety* for himself and his two partners, B and C, and as to the *other moiety* for D. This estate will probably not be dealt with until after the new Acts come into force. Should A execute a vesting deed in favour of himself and the other owners, or should another trustee be appointed to act with him ?

A. He should appoint an additional trustee to act with him under the Trustee Act, 1925, s. 36, and they should in the deed merely admit that they hold on trust for sale.

20. *Q.* A, B and C are the owners as tenants in common of land at Z. A and B are the owners of other land at Q, and borrowed from D money which is secured by an informal equitable charge not only on the Q land belonging to A and B, but also on A and B's undivided shares in Z land. Should a charge be registered under the Land Charges Act, 1925, against A and B in respect of land at Z ?

A. Not as regards the Z land. The equitable charge is transferred to the corresponding undivided shares in the proceeds of sale and rents and profits until sale in that land. Unless the charge is cleared before 1st January, the Z land will vest in the Public Trustee on the statutory trusts for sale. The mortgagee should give notice of his charge to the Public Trustee. As regards the Q land, if it is not already clear, the mortgagee, who presumably has the deeds, should before 1st January insist on his security being perfected, so that he may rank as a first legal mortgagee of the entirety and thus acquire a term of 3,000 years therein, which will then be paramount to the trust for sale. If this is done, the Q land will vest in A and B on trust for sale subject to the mortgage term. No land charge is required to protect a mortgage if the mortgagee has the deeds.

By Mr. E. S. GERRISH.

21. *Q.* Testator died in 1924, seised of four freehold farms subject to mortgages including P Farm. Will directs three executors and trustees to carry on all farms in their discretion. Profit to be income of residuary estate. As to P Farm, trustees are directed to convey it to testator's son (then twenty-two years of age) discharged from the mortgage upon it, provided (1) he should attain twenty-five years (in September, 1927); (2) he should pay or secure to trustees on mortgage certain sums of money ; (3) should perform other conditions relating to the farm. In the event of son dying before September, 1927, P Farm to be held upon trust for sale for benefit of son's children (if any). Subject thereto upon the trusts of the residue. Residue on trust for sale for testator's widow for life, and thereafter equally between four daughters.

(1) In whom will the fee be vested after 1925 until September, 1927 ?

A. Apparently there has been no assent, and it remains in the executors.

(2) Will the trustees as personal representatives or otherwise have powers of tenant for life until September, 1927 ?

A. Yes, after 1925, as personal representatives, if they have not assented.

(3) Is the widow tenant for life until September, 1927, by virtue of Settled Land Act, 1925, s. 20 (viii) ?

A. She cannot act as a person having the powers of a tenant for life unless the executors have assented. It would be better that they should not do so at present.

By Mr. MAX C. BATTEN.

22. *Q.* It is suggested that the extended powers of investment of capital money with Settled Land Act, 1925, ss. 39 and 110, would enable a tenant for life to defeat the reversioner's claims in some such way as follows :—A tenant for life of settled land, whose business has been formed into a public limited company, contracts to sell the land to that company and to accept shares or priority charges of such company in payment of the purchase money, or (having power under the settlement) directs the trustees to invest in such shares or priority charges. The company, which is in a bad financial position, sells the land and uses the purchase money to pay off current debts and on the trustees attempting to realise the securities of the shares etc., or the company going into liquidation, it is found that the security is worthless. Is this possible ?

A. Not under the general law. Section 39 (5) does not extend to limited companies incorporated under the Companies Acts. The transaction might be carried out under a general overriding power, under which the statutory powers could be extended or under an express power in the settlement.

23. *Q.* It has been stated that a purchaser need not inquire as to the fact of marriage where land passes under a marriage settlement. I submit that the fact of marriage will be of far greater importance after the 1st January, 1926, as, in view of the fact that the dealings with equitable interests will be kept off the title, there will be no evidence to a purchaser to show that the consideration for the settlement did not fail?

A. A vesting deed, forming part of a strict settlement made on marriage, will be executed as an escrow, and will not be delivered till the marriage is solemnised. In other respects the law and practice have not been altered.

24. *Q.* By a marriage settlement T settled the P estate, after the death of himself and his wife (who are both dead), absolutely in equal shares upon the children of the marriage. There were only three children, A, G and W. In the last deed of appointment of trustees, executed by all three children, A and C were appointed trustees, and it was declared that they should continue to hold the property in trust for the three beneficiaries under the terms of the settlement. G is dead, having made a will. What will be the position of the P estate on 1st January?

A. The entirety being vested in A and C as trustees for tenants in common, A and C will hold it on trust for sale.

25. *Q.* Some time after the marriage, T conveyed the remainder of his real property, called the X estate, to trustees upon trust for sale, and by a deed of even date (declaring the trusts of the proceeds) gave himself and his wife successive life interests therein with remainder, subject to the payment of certain annuities (of which three are still subsisting) for division in equal shares between his said three children. The trustees had power to set aside a fund to meet the annuities, but this has not yet been done and there are no investments in hand out of which it can be done. G died in 1924, having appointed the said A his sole executor and devised and bequeathed the whole of the residue of his estate in equal shares between A's infant daughter and the three daughters of W, one of whom is now of full age; the other two being minors. The present trustees of the trust for sale are the said A and said C. What will be the position with regard to the X estate in 1926?

A. A and C hold it on trust for sale, the trusts affecting the proceeds do not come on the title to the land.

26. *Q.* It is assumed that the annuitants could not, or, at any rate, should not, register their annuities?

A. They should not. They have only a claim against the proceeds of sale and the rents till sale.

27. *Q.* Should A, as executor of G's will, appoint another trustee to act with him? If he does not, can he give good receipts to A and C, as trustees of the trust for sale, for the share of the income from the trust property or the proceeds of any sales under the trust for sale due to G's estate?

A. A *quâ* executor is only entitled to a claim to property as personal estate. He can give a good receipt. To avoid payment into court where he receives the infants' shares, he can appoint trustees of the infants' property and it will be expedient to do so.

By Mr. W. H. P. Gibson.

28. *Q.* On 1st January next six persons hold land (not being settled land) beneficially as joint tenants: Law of Property Act, s. 36 (1) says they hold on trust for sale in like manner as if they were tenants in common. Does this mean that the land is vested (*a*) in the first four upon trust for sale under s. 34 (2); or (*b*) in the Public Trustee on the like trusts under Sched. I, Pt. IV (4); or (*c*) in the whole six on trust for sale by reason of the words "in like manner as if they were tenants in common"? In s. 36 (1) do the words "trust for sale" qualify the meaning of the "statutory trusts" defined by s. 35?

A. The vesting provisions in the 1st Sched. do not, merely by reason of the existence of a joint beneficial tenancy, operate to divest the six owners of the legal estate, they hold on trust for sale, and the net proceeds of sale are held under the "statutory trusts" so as to give effect to the beneficial interests, no tenancy in common is created. After 1925 not more than four trustees for sale can be appointed to act: Trustee Act, 1925, s. 34 (2).

By Messrs. Hatchett, Jones & Co.

29. *Q.* Before 1926 land was conveyed on sale to Mrs. A, a married woman, by whom the purchase money was expressed to be paid. The purchase money was in fact found by A, the husband. Will a purchaser from Mrs. A be entitled to rely on the equitable presumption of advancement, or can he insist on the concurrence in the conveyance to him of A, or if A is then dead, of his personal representatives?

A. The sole question to be decided is whether or not Mrs. A was a trustee for her husband. If, in accordance with the presumption, she in fact held for her own benefit the shifting provisions will not transfer her estate to the persons deriving title under her deceased husband. If she has accounted for the profits to her husband and afterwards to his representatives, this would be evidence that she was a bare trustee.

By Mr. W. Turner.

30. *Q.* Freehold land was conveyed to A and B as tenants in common (undivided moieties). A has mortgaged his half share by a legal mortgage to C. On the 1st January, 1926, the property will be vested in A and B upon trust for sale. C's mortgage becomes a term of years, and, being a mortgage of a moiety, is an equitable mortgage. What steps is it necessary for C to take to protect his security: (1) If he holds the title deeds as the mortgagee of A; (2) if the title deeds are in the possession of B; (3) could A and B as trustees for sale sell for a price, one moiety of which would not repay C's mortgage? How is C protected?

A. As one of the tenants in common has mortgaged his share, the entirety of the land will vest in the Public Trustee on trust for sale. The mortgagee should give notice of his mortgage to the Public Trustee. After 1925 it operates only on the proceeds of sale. No land charge can be properly registered. The deeds should be delivered to the Public Trustee or any trustees appointed in his place as having the legal estate.

LECTURE No. 5.

Mr. President and Gentlemen: In my last lecture I omitted to say anything about the preparation of wills, and I think I ought to fill this gap before dealing with the enforcement and protection of equitable interests.

Number of executors.

As regards the appointment of executors we shall all have to see that:—

(i) where a life interest is limited by the will; or
(ii) where a minority is likely to occur,

at least two general executors are appointed.

If only one is appointed then the Probate Division has power under s. 160 of the Judicature Act which replaces s. 12 of the Administration of Estates Act to appoint an additional representative.

Not more than four persons must be appointed general executors; if more are appointed, representation will only be granted to four.

Number of administrators.

In passing I may mention that in the case of an intestacy at least two individuals or a trust corporation will be appointed administrators or administrator if a life interest results from the intestacy or an infant becomes entitled.

This does not mean that a sole personal representative cannot give valid receipts. The restrictions, in this respect, only applies to trustees for sale and to Settled Land Act trustees.

Settlements before death.

Again one must consider whether the testator is a tenant for life or a limited owner of land settled before his death. If he is, it will be expedient, though not necessary, to appoint the persons who at his death are the Settled Land Act trustees of the settlement to be the executors as respects the settled land.

I said it was not necessary because such an appointment will be implied by law, if it is not made, but I think the insertion of such a clause will prevent the matter being overlooked. It could be dealt with by a codicil.

Special representatives.

On the death of a tenant for life you are aware that the legal estate in the settled land vests in these special personal representatives, that is to say the Settled Land Act trustees of the subsisting settlement; and representation will be granted to them limited to the settled land.

If a mistake is made and representation is granted to the general executors this can afterwards be rectified. One of the objects is to avoid the mixing up of the assets of the testator with the settled property; moreover, the Settled Land Act trustees are the persons who know of the facts relating to the settled land and are obviously the persons who ought to have representation.

Bonds.

Power is taken to dispense with administration bonds when representation is granted to two administrators. As a rule this power will be exercised in favour of Settled Land Act trustees.

No bond will be required if the grant is made to a Trust Corporation, and in the case of executors no bond will of course be required at all.

Form of devise.

All the estate, real and personal, will vest in either the general or special executors, and on that account I suggest that, where a testator intends to settle any land or to vest it in trustees for sale, the best course will be to devise or bequeath such property to the executors, on trust to execute the assents requisite for giving effect to the trusts, as this will be a reminder of what has to be done. Still if the devises or bequests are made direct it will be immaterial, for the same process will have to be gone through.

Devises, etc., create equitable interests.

No legal estate will pass under a devise, bequest or testamentary disposition, and I must remind you that where the land is settled by the will a vesting assent will be required to pass the legal estate to the tenant for life as a trustee, to name the Settled Land Act trustees and state who has power to appoint new trustees.

Similarly if the land is to be held on trust for sale there will be an assent by the executors to the trustees for sale, who may or may not be themselves, upon trust to sell it and stand possessed of the proceeds and of the income until sale on the trusts of the will.

Here again the assent should set out the express power, if any, to appoint new trustees, for the assent itself will be the conveyance on trust for sale.

I do not mean to imply that wherever you have a trust for sale there must always be two instruments. For instance, if two or more purchasers, not exceeding four, acquire land and provide the money say in equal shares, it will be quite in order to convey the land to them jointly on trust for sale and by the same instrument to declare that they hold the net proceeds in trust for themselves in equal shares. Still as a general rule there will be two instruments.

Appointment of Settled Land Act trustees.

If a realty settlement is made by the will then Settled Land Act trustees should be appointed as under the old practice, but if this is not done the executors will *ipso facto* become the Settled Land Act trustees. No such trustees are required where there is a trust for sale.

Management during minority.

There will be no need to appoint trustees for the purposes of management during a minority, for the Settled Land Act trustees are given the requisite powers by the new Settled Land Act.

Tenants in tail in possession.

You will have noticed that under s. 176 of the Law of Property Act, 1925, a tenant in tail in possession, who under the old law would have been able to devise or bequeath entailed property had he executed a disentailing assurance, will be able to dispose of such property, without going through the formality of executing a disentailing assurance.

The power in question is not a special power, but a limited general power; that is to say, the testator must either refer to the property which he means to dispose of in right of the power, or to entailed property generally, or to the instrument under which the property is acquired.

Wills before marriage.

Another useful reform has been made, at the instance of Lord Buckmaster, under which a will expressed to be made in contemplation of a marriage will not be revoked by such marriage. But you should bear in mind that, when a will is made in this form, it should be made subject to a condition that it is not to take effect unless the intended marriage is solemnised.

Lord Chancellor's forms.

Certain statutory forms have been prescribed by the Lord Chancellor to which testators may refer in their wills. At present these forms only seek to supply mere machinery; for instance, the usual trusts for sale, conversion, payment of debts, legacies, etc., may be incorporated.

If these forms are widely used and there is any demand for an extension of this principle, no doubt it will be practicable to attend to this at some future date.

Personally, I entirely sympathise with the idea of doing all that we can to simplify and shorten wills, for so many testators desire complicated arrangements to be carried out on a sheet of notepaper. Unless their advisers take a very firm stand this frequently results in an administration summons.

Statutory powers.

Many powers have been conferred not only by the Settled Land Act but also by the Trustee Act and by the Administration of Estates Act, and on this account you will find that wills must necessarily be shorter after 1925 than under the old law.

Appropriation.

The power given by the Administration of Estates Act to appropriate will be useful, but at the same time, in order to avoid stamp duty, I apprehend that the consents required by s. 41 of that Act will be made unnecessary by an express provision in the will, and possibly the testator may decide that notices should be given to the persons interested in place of the consents.

There are other powers, particularly the powers of management, conferred by that Act which will also assist us in future to turn out concise drafts.

Remember, too, please, that the personal representatives can let the beneficiaries into possession without affecting their own powers. So do not be in any desperate hurry to make the requisite assents in writing, whether they take the form of absolute assents, or assents on trust for sale, or vesting assents of settled land.

It is better to clear the estates of charges immediately raisable before an assent is made. The personal representatives will have ample powers to carry on.

Enforcement of equitable interests.

Now I can deal with the matter of the enforcement of equitable interests against the estate owner.

So far as regards settled land, this is provided for by s. 16 of the Settled Land Act, 1925.

Settled Land.

To some extent that section departs from the general rule laid down in all other cases, for it expressly authorises a conveyance or assent, relating to a legal estate, to be made subject to family charges or powers of charging under a settlement.

This may be useful as a whip to drive the tenant for life estate owner; but in practice I have very little doubt that it will become almost, if not quite, a dead letter.

The reason is this, that a mortgagee could not properly be advised to take a legal mortgage subject to an equitable family charge; for though the security might be ample, still when he came to sell the purchaser would object, and rightly object, to the title the mortgagee could make, on the ground that the purchaser himself would immediately be placed in the position of a trustee tenant for life, as respects the family charge in question.

This would be intolerable, for it would mean that before the purchaser could dispose of a legal estate a vesting instrument would have to be executed, and any capital money arising from transactions carried out by him would have to be paid in the first instance to Settled Land Act trustees.

There may be one exception, for instance, if a jointress is very old a mortgagee might be advised to take the risk of having to realise before her death.

General rule.

The general rule will be, that no legal estate should be transferred or created by the estate owner for giving legal effect to an equitable interest, so long as a settlement remains subsisting.

A settlement, as you will see from s. 3, remains a subsisting settlement so long as any limitation, charge, or power of charging subsists or is capable of being exercised or so long as a person who, if of full age would be entitled, is an infant. If a question arises whether or not a legal estate ought to be created so as to become paramount to a settlement, the matter can, if necessary, be settled by the court under s. 16.

I have ventured to lay down a broad rule, but I must guard against being misunderstood. I do not mean that when a tenant for life dies and portions and duties become raisable, that they should not forthwith be raised and paid. If there is not sufficient capital money or investments in hand out of which they can be discharged, then it may be necessary to raise them by mortgage, either in a gross sum, or by arranging for further advances to be made as and when instalments of duty become payable.

Generally, as I have just said, it will be convenient for these matters to be cleared out of the way before the personal representatives execute a vesting assent in favour of the person next entitled under the settlement. In the meantime they can let the person entitled to the income into possession without prejudice to their powers: Administration of Estates Act, 1925, s. 43. At the same time a personal representative has no right to postpone the making of an assent merely because duties or other liabilities are outstanding, if reasonable arrangements are being made for their discharge: *ib.* s. 36 (10).

Well, if an assent has been made before the liabilities have been cleared, the proper course will be for the tenant for life to raise them under Settled Land Act, 1925, s. 71, by a mortgage of a sufficient part of the settled land.

If a jointure comes before a portions charge, and the portions cannot be raised under s. 71 without danger to the jointure, then this is a case where the raising of the money ought to be postponed.

Trustees for sale and other estate owners.

The corresponding section relating to a legal estate vested in an estate owner absolutely, or in trustees for sale, is s. 3 of the Law of Property Act, 1925.

You will notice particularly that if the proceeds of sale become vested in persons of full age in undivided shares they cannot require the land to be conveyed to them in undivided shares, but may insist on its being vested in not more than four of them on trust for sale.

Then it is useful to remember that legal effect can be given to an agreement for a mortgage or charge by means of a charge by way of legal mortgage, for in the Act the definition of "legal mortgage" includes a legal charge.

Whichever section applies, you will note that the estate owner will hold the land, or the proceeds of sale of the land in the case of a trust for sale, upon the trusts requisite for giving effect to the equitable interests of which the estate owner has notice, whether created before or after the settlement or the trust for sale.

The larger you make the ambit of the trust, in the same degree you can extend the over-reaching powers.

Protection of equitable interests.

The next subject to be dealt with, and it is a large one, is the protection of equitable interests and powers, for, in view of the wide overreaching powers and defeating provisions, this has become a matter of greater importance than it was before 1925.

Receipts by trustees.

You will remember that under s. 2 of the Law of Property Act, 1925, all money, arising either under a trust for sale or under the statutory powers given to trustees for sale, must be paid to not less than two individuals as trustees or to a trust corporation.

The same rule applies to capital money arising under the Settled Land Act. Similarly, we have just seen that where there is a life interest or a minority there will either be a trust corporation to act as executor or administrator or at least two executors or administrators.

In this way ample provision is made where there is a trust to secure that the money shall be paid to at least two individuals or to a trust corporation.

This restriction on a sole individual trustee being able to give valid receipts will be, I submit, of immense importance in practice, for it is so easy, quite apart from fraud, for mistakes to be made by a sole trustee; for instance, allowing trust money to become intermingled with his own estate.

This restriction is of particular importance, because under the Land Charges Act a general equitable charge is not to be capable of being effectively registered as a land charge if it arises or affects an interest arising under a trust for sale or a settlement.

Title Deeds.

It is against the estate owner, namely, the person who has the legal estate vested in him, that protection is required; but it is not sufficient for an estate owner to convey a legal estate to a purchaser unless he at the same time accounts for the possession of the title deeds. This is made clear by s. 13 of the Law of Property Act, 1925.

Protective registration.

The next important protection to which I must refer is the power to register either a pending action, a writ or order,

a deed of arrangement or a land charge, according to the interest intended to be protected at the land registry or, in some cases, in a Yorkshire Registry, or in the Joint Stock Companies Register at Somerset House.

Clearing of entries.

I have already pointed out that the mere registration does not, in all cases, prevent the interest from being overreached where it is an interest which can be properly represented by the proceeds of sale. This is made clear by s. 22 of the Land Charges Act. In that case there is no need for a purchaser under s. 43 of the Law of Property Act, 1925, to require the registration to be cancelled, because the mere conveyance to him will operate to cancel it in regard to the land in question; and I have already explained that, although registration operates as notice, it is immaterial, when the overreaching powers are exercised, whether or not the purchaser has notice.

Pending actions.

It is useful to observe that a pending action has been defined as "any action information or proceeding pending in court relating to land or any interest in or charge on land," and that it also includes a petition in bankruptcy.

Apart from the extension to petitions in bankruptcy, this definition makes it clear that any proceeding in court relating to the title to land or to a charge on land can be registered as a pending action, and, as you are no doubt aware, a pending action does not bind a purchaser without express notice of it unless it is registered.

There is nothing, of course, in the Land Charges Act to take away the protection afforded by express notice of a pending action.

Annuities.

I have mentioned that an annuity within Pt. II of that Act, though registered, will nevertheless be capable of being overreached if the overreaching powers are exercised, because that is a matter which can properly be shifted, but I should mention again that annuities which ought to have been registered under the old law should, after 1925, be registered as land charges because, unless they are so registered, a purchaser will not be deemed to have notice of them.

Writs and orders.

No substantial alteration has been made in regard to the registration of writs and orders affecting land, save that they will, after 1925, include receiving orders in bankruptcy. Nor has any alteration been made in regard to deeds of arrangement, except that they will have to be re-registered every five years. A year is given to re-register a deed of arrangement made before 1926.

Deeds of arrangement.

Many deeds of arrangement, of course, operate as conveyances of legal estates, but they may include equitable interests. At any rate, whatever the interest is which is passed by the deed, it must be registered under the Land Charges Act, otherwise it will be void as against a purchaser.

Land charges.

The registration of "puisne mortgages" and of equitable mortgages as land charges or, in the case of puisne mortgages, in a local deeds register, will prevent them from being overreached on a conveyance to a purchaser, though a prior mortgagee will still be able to convey free from inferior charges when he makes a title on a sale.

Estate contracts are not such matters as can be properly shifted to the proceeds of sale when the overreaching powers are exercised; accordingly a contract by an estate owner to convey a legal estate may be registered as a land charge.

In practice, as I have mentioned, it will not be necessary to register such a contract unless completion is delayed or the intending purchaser would, under the old law, have issued a writ and registered a *lis pendens*.

Options and rights of pre-emption are proper subjects for registration as estate contracts. So also is a contract to settle a legal estate if it is not to be carried out forthwith.

Restrictive covenants again are not matters which can be properly shifted to the proceeds of sale, and such a covenant entered into after 1925 must be registered as a land charge for a purchaser, including a lessee, will take free therefrom unless it is so registered; and an equitable easement stands on the same footing.

This registration of restrictive covenants should put a stop to a practice which, however well intentioned, cannot generally be justified, of suppressing any reference thereto in a conveyance. The hardship which this was intended to meet can now be dealt with by an order modifying or discharging the objectionable covenant.

Overreachable interests.

Just one word of warning: because an interest can be overreached under the powers given to a tenant for life or to trustees for sale, notwithstanding registration, that is no reason at all why the interest in question should not be registered. The legal estate may be held absolutely by an estate owner, then in order to overreach the interest in question he will have to create a special trust for sale or a special settlement, and the capital money will have to be paid to not less than two individuals or to a trust corporation.

Thus registration, in these cases, is as effective as if the interest in question had arisen under a settlement or had arisen under a trust affecting the proceeds of sale.

Notices.

I must again, in this connexion, call your attention to the fact that under s. 137 of the Law of Property Act the rule in *Dearle* v. *Hall* has now been applied to interests under a realty settlement, whether created by deed or will. The result is that notice must be given in writing, as provided by that section, to the Settled Land Act trustees, not merely to prevent them from distributing the assets without regard to the equitable interests, but in order to secure priority as between competing equitable interests.

Under that section the notice must be in writing, and if there are no persons on whom the notice can be properly served provision is made for endorsing a note of the dealing on the trust instrument.

In addition to giving notice to the Settled Land Act trustees, I should generally advise that, where a remainderman is dealing with his interest, notice should also be given to the tenant for life estate owner, but this is not made essential.

Personal property.

That section goes further than merely applying the rule in *Dearle* v. *Hall* to real estate, for it makes a notice in writing requisite in respect of any dealing with an equitable interest in personal property as well as in realty.

I do not think you need trouble much about the next section (s. 138) under which a trust corporation may be appointed to receive notices in place of the trustees, except to see that a trust corporation has not been appointed for this purpose. Though, if an appointment has been made it will be essential to give notice to the corporation. But as respects registered land, that section is made use of in the Land Registration Rules, for in that case, besides giving notice to the trustees, notice must be given to the Land Registrar and this will be entered in the Minor Interests Index. In the case of a mortgage this will take the form of a Priority Caution; in the case of an absolute assignment, of a Priority Inhibition.

Life interests and remainders.

It is useless to register a land charge in respect of a mortgage of a life interest, for a general equitable charge is so defined as to prevent such registration being effective. Whether it will be ever worth while to register a land charge against a remainderman who is entitled in fee simple is another matter.

If, on the death of the tenant for life, he would become absolutely entitled free from any family charges, it might conceivably be worth while to do so, for in that case the land would no longer be settled land, and the interest in question might be held no longer to arise under a settlement, but I do not advise it. The better plan is to take an irrevocable power of attorney to execute the requisite legal mortgage as soon as the remainderman acquires the legal estate. If the remainderman has sold his fee simple, the purchaser will be entitled to require the legal estate in the settled land to be vested in him only when the settlement comes to an end. A remainderman cannot deprive himself of his statutory powers any more than a tenant for life in possession can do so.

You will notice, first, that under s. 104 of the Settled Land Act the consent of an assignee or mortgagee to dealings by the tenant for life will no longer be required by a purchaser, but that the assignee or mortgagee will obtain an interest or charge in respect of the capital money corresponding to the interest or charge which he had in the life interest in the settled land.

And secondly, that the section applies, notwithstanding that the interest of the tenant for life under the settlement was not in possession when the assignment was made. Thus, if the remainderman who makes the assignment would, independently of the assignment, ultimately have become a tenant for life in possession, then the section will apply and he will be able to exercise his statutory powers notwithstanding the assignment or mortgage made while his interest is in reversion.

Consents by assignees of life interests.

Though I have said that a purchaser of the settled land will not be concerned to obtain the consent of an assignee of a life interest, it does not mean that the tenant for life must not obtain that consent, it would be a breach of trust for him not to obtain that consent; but the consent does not come on the title to the land; these dealings relate exclusively to equitable interests, hence the persons interested remain coyly and discreetly behind the curtain.

Recalcitrant tenants for life.

In passing may I call your attention to the fact that under s. 24 of the Settled Land Act if a tenant for life has parted with his interest, the court has power to make an order authorising the trustees to exercise the statutory powers in his name. The object of this, of course, is to avoid having to bribe the tenant for life to exercise his powers.

When an assignment is taken from a tenant for life or remainderman, it may well be worth while to obtain an irrevocable power of attorney to consent to an order being made under this section.

Such an order must be registered under the Land Charges Act as an order affecting land.

Surrender to remainderman.

The restriction against the release of the statutory powers of a tenant for life is drawn tighter, one is almost inclined to say that, apart from a cesser or shifting clause, "once a tenant for life always a tenant for life," but this would not be quite accurate, for a new and beneficent exception has been introduced by s. 105. Under that section, if the equitable interest of a tenant for life is surrendered, whether before or after 1st January next, to a person who if the surrenderor were dead would have the powers of a tenant for life, then the surrenderee will become the tenant for life at the time he would have acquired that position if the surrenderor were dead. Thus after 1925 we shall no longer be faced with the anomalous position of a father exercising the powers while his son is in possession and a *de facto* tenant for life. Vesting deeds will be made in favour of the son, and not of the father in cases within this section.

Protection of legal estate.

Now under s. 13 of the Settled Land Act, a tenant for life, entitled to have a vesting instrument made in his favour, cannot, as a rule, deal with the legal estate until such an instrument has been executed. I should point out that this does not prevent a purchaser acquiring a legal estate, where he has no notice of the existence of a settlement.

Fetters on the powers.

Though a tenant for life estate owner is treated as if he were the absolute owner of the land, still, under s. 18 of the Settled Land Act, where land has become the subject of a vesting instrument, he can only exercise the statutory powers as extended, if at all, by the settlement, and can only do so if the capital money is paid to the Settled Land Act trustees, being not less than two trustees, if individuals, or a trust corporation. But under s. 110, subject to any pending action or order which may be registered against him, he may continue to exercise the statutory powers, though a change in the beneficial ownership has occurred, until a new vesting instrument has been executed for evidencing the change under s. 7 of that Act.

The main protection.

Section 14 of the Trustee Act re-enacts the statutory power for trustees to give receipts, but you will notice that a saving has been inserted therein to give effect to the new law under which capital money arising under a settlement or a trust for sale must be paid to not less than two individuals as trustees or to a trust corporation.

Indeed, that is the main protection, as you will have surmised, which under the new law will be given where the land is subject to a settlement or trust for sale.

Rights of purchasers of beneficial interests.

When dealing with his beneficial interest a tenant for life, apart from his statutory powers, can only create an equitable interest, still under s. 111 a purchaser (which includes a mortgagee) of the life interest, will have all such powers and remedies as he would have had if the life interest had been a legal estate. This provision will enable him to sue the tenants and occupiers for rents if he takes possession.

Protective powers of the court.

You will notice, please, that under s. 38 of the Administration of Estates Act, the court as against any person, other than a purchaser, is given the widest powers to make orders against personal representatives and persons deriving title under them for giving effect to the rights of the persons beneficially interested; and it is by virtue of s-s. (1C) of s. 36 of that Act that the personal representatives are not entitled to postpone the giving of an assent merely on account of the subsistence of death duties, debts or other liabilities, if reasonable arrangements are being made for discharging them.

Indemnity for duties.

It is true that under s-s. (6) of s. 8 of the Settled Land Act a conveyance may reserve a term of years absolute to a personal representative for indemnifying him against any unpaid duties, that is unpaid at the date of the conveyance; but this is quite an exceptional power and one that will seldom, if ever, have to be exercised.

Rights to a conveyance, etc.

Express power is given by s. 43 of the Administration of Estates Act for any person interested who claims possession or the appointment of a receiver, or a conveyance or an assent, to apply to the court to direct the personal representatives to give effect to the beneficial interests. Such proceedings can of course be registered as a pending action against the personal representative, if necessary.

Now, as I have a good deal of ground to cover in my next and last lecture of this course, I propose to take one matter out of its proper order, and to wind up this lecture by giving you a list of some of the important matters to which your attention should be directed now or in the near future. I do this all the more readily as I happen to know that some of my

patient listeners are getting a little anxious, and that is not a frame of mind which I wish in any way to encourage.

My list, following the old-fashioned Wrangler practice, is more or less in order of merit.

Vesting deeds and Counsel's certificate.

1. I select for first place the preparation of vesting deeds, for giving effect to the rights of a person who, on the 1st January next, will be a tenant for life of full age or statutory owner of settled land. This should be executed on or about the 1st January to prevent paralysis. Mind these are *not* wanted for land held on trust for sale.

If on 1st January, having regard to the Settled Land Act, which increases the classes of person who will become trustees, you will not have any Settled Land Act trustees to execute the deed, see that they are appointed at once.

If you have not instructed your Counsel to give you a certificate of title in connexion with the vesting deed, do so. Do not be hard on him, he cannot certify as to matters which he has not seen.

Secret trusts.

2. I give second place to "secret trusts." See what they are, and if the land will not vest as desired, either declare a trust for sale or vest it in trustees for sale.

In any case see that the deeds are not left with a person who will not have the legal estate.

Partition actions.

3. A good third is "partition actions." If the entirety will vest in an inconvenient way, issue your writ before 1st January next.

Something may also be done by carrying through partitions by agreement or by vesting all the undivided shares in trustees for sale before that date.

Partners.

Partners may also find it convenient to vest their land in not more than four of them on trust for sale, with full powers to raise money.

Mortgages of leaseholds.

4. Persons entitled to mortgage terms, free from any right of redemption, who are nervous about acquiring the leasehold reversions, can, before the 1st January, convey the mortgage terms to trustees for sale (worthy men of straw) to hold the net proceeds for the persons entitled. This is not really a practical point. The owners must observe the covenants anyway, otherwise the head lease will be forfeited. Still, there are a few nervous people, and we must not hurt their feelings.

New trustees.

5. See that in the case of trustees for sale and Settled Land Act trustees there will be at least two to act on 1st January next.

Puisne mortgages.

6. My next place goes to "puisne mortgages," where you have not got the deeds and you are a little unhappy about the security register a land charge. If you know all about it, do not trouble to register merely to get the benefit of the legal estate, but wait till a transfer has to be made, then the transferee must register a land charge within a year.

Annuities.

7. You probably will not have any "annuities" within the Land Charges Act, 1925, s. 4 (5) to attend to, but if you have register a land charge under Class E. Also ran—

Perpetually renewable leaseholds.

8. "Perpetually renewable leases or underleases"; see that these are sent to the lessor's solicitors for endorsement before 1927. Remember you have got a year to agree the additional rent or to commute it.

Wills.

9. See that, where a life interest is given or a minority may occur, there will be at least two executors.

If specific legacies are charged and are to be received free from the charge, rectify this by a codicil.

If the testator is a tenant for life, appoint the Settled Land Act trustees at his death to be his special executors.

Wills can generally be shortened, but it is not worth while making a new one merely on this account.

See that the abolition of the rule in *Shelley's Case* does not affect the construction; also that all entailed interests are given by means of the proper technical words.

Conditions of Sale.

10. Get in your supply of the General Conditions of 1925. I have no proprietary interest or royalty in respect of them.

Compensation agreements.

11. Stewards should have their forms of compensation agreements ready by the 1st January next.

Long terms.

12. Reversioners entitled subject to long terms should collect some rent within the next five years in order to prevent enlargement.

Official certificates of search.

13. Obtain official certificates of search in the Index, not in the registers, on every dealing for value, and afterwards do not forget to abstract and produce them.

Absolute owners subject to family charges.

14. If a client absolutely entitled has acquired land subject to family charges obtain evidence of the discharge thereof; in default, arrange for a release of the charges, or in a last resort for the execution of a vesting deed by the Settled Land Act trustees.

Concurrent Conveyance and Mortgage.

Now, if you will allow me, I will correct a point arising from one of my answers.

If a conveyance containing restrictive covenants and a mortgage by the purchaser is carried out concurrently, it will be sufficient if the land charge is registered on the date of the conveyance. The covenants will then bind the mortgagee, for in these cases the court will hold that the three matters, all really forming part of one transaction, have been effected in the proper order. There will be no telephoning or telegraphing. The application for registration can be lodged before actual completion, giving the agreed date of the conveyance, which will have been executed by the purchaser.

Now, gentlemen, will you please let me have your questions? Meanwhile, I will answer a few that I have here.

[NOTE.—All questions and answers on Lecture 5 will be published in THE SOLICITORS' JOURNAL before Lecture 6.]

(Transcript of the Shorthand Notes of The Solicitors' Law Stationery Society, Limited 104-7, Fetter Lane, E.C.4.)

THE INVENTIONS COMMISSION.

The Inventions Commission, sitting at the Law Courts on Monday last, under the chairmanship of Mr. Justice Tomlin, heard the claim of Messrs. Ewart and Sons, Limited, of Euston Road, in respect of improvements to the Iris shutters of searchlights.

The object of the shutter, said Mr. Ellis, for the claimants, was to have a perfect light-tight screen to prevent the enemy from torpedoing our ships. While the searchlight was being operated the enemy had a target, and it was desirable to reduce this period as much as possible, so that the shutter could open and shut quickly. The cutting off of the electricity was not sufficient, because there was a glow for three or four minutes, and while this glow was in existence the ship was a target for hostile submarines. Mr. John Ewart devised an Iris shutter, which was light-tight and considerably lighter in weight than other shutters. Mr. Justice Tomlin announced that the Commission would consider their award.

Solicitors' Managing Clerks' Association.

LAW OF PROPERTY ACTS LECTURE

(Eighth of the Series)

By Mr. A. F. TOPHAM, K.C.

On Wednesday, 2nd December, 1925.

(Verbatim Report.)

The Chairman: Gentlemen, a fortnight ago I announced that the Education Committee of the Council were considering a further course of lectures to be held in the new year. That proposition has now been brought up before the Council of the Association and it has been decided to hold a further course next year. The course will be of the same duration as this; it will be for ten weeks, and it will start in or about the middle of January; the actual date is not yet fixed. I shall have to fix the date in consultation with the good Vicar of St. Clement's Danes to arrange again that the bells do not ring while the lectures are being delivered.

Mr. Topham has very kindly come to our assistance once more, and has agreed to take the further course. I think I did tell you before, but I would like to tell you once more, something about the lines of the further course. Mr. Topham will attempt to cover such parts of the legislation as he has not been able to deal with in this course. He will also, as far as he can, go further into the matters which he has dealt with in this course of lectures; he will go somewhat deeper into them.

But what we consider rather more useful still is that you are all invited from now onwards to send in your questions in writing. Mr. Topham will not, I venture to suggest, attempt to answer all those questions, as somebody else has been attempting to do. He will, as far as possible, use those questions as a guide to him as to what you would like him to deal with. There must be many points on these Acts, and there certainly will be next year when they come into operation, upon which all of us are worrying, and Mr. Topham would like some guide as to the points which are troubling you.

Members of the Association, as before, will be able to attend these lectures by virtue of their membership; non-members will be at liberty to attend on payment of the same fee as they have paid for this course.

I do invite those of you who are thinking of coming to the new course, whether you are members or non-members, to communicate with the secretary, so that he can compile the list.

Mr. Topham: Mr. Chairman and gentlemen, I associate myself with the remarks made by the Chairman in regard to the further course. On one occasion before he referred to my reluctance in consenting to give a further course. I want to assure you that the reluctance is only a question of being able to give the time that is required to the lectures. Apart from that, I am bound to say, I quite enjoy lecturing to you; I find it is most useful for me, because it does compel me to make a most thorough examination of the Act, and I am learning a tremendous lot.

There is one little point with regard to charges by way of legal mortgage that I should like to add before coming to the subject of the lecture to-night. I do not want anything I have said to discourage you from making use of that form of charge in any case where there is any practical advantage in it. It has been pointed out to me that there may be cases where that form of charge will really be of practical advantage. For instance, at the present time I daresay many of you are busily engaged in working out common forms for use by large companies, banks, building societies, and so on, who have stock forms of mortgages, all of which have to be revised. At the present time, when you are having those stock forms, you want one form for freeholds and another for leaseholds, both as regards the mortgages and perhaps also the registered charges. It has been pointed out to me that you can simplify your forms very much on those occasions by adopting the form of charge by way of legal mortgage. I have not worked it out altogether, but at first sight it seems that that would be so, and that you could very greatly simplify the form, adopting the same form for freeholds and leaseholds. In those sort of cases where a real advantage is gained in shortening your common forms, I do not in the least wish to suggest that it would not be an advantage to use that class of charge.

Now, coming to the subject of to-night, contracts for the sale of land, those are dealt with in the Law of Property Act by means of what might almost be called a new code. Certain sections—ss. 40 to 48—deal with contracts for the sale of land. They re-enact a good deal of the law which existed before. For instance, they re-enact s. 4 of the Statute of Frauds which requires the contract for the sale of land to be in writing. But there are many new provisions, some of which are of great importance. In particular, there are a considerable number of clauses, or provisions, which you might want to put into contracts for the sale of land which are rendered void; you are not to put them in. That may sound rather like an interference with the liberty of the subject, but there is a very good reason for it, the reason being that as a new form of conveyancing is being offered to you based on the proof of the legal title and dealing with the legal estate almost exclusively, the idea of this restriction of your liberty is for your own good, to make you, whether as vendor or purchaser, as far as possible, adopt the new scheme. It rather forces upon you the best method of making a title. These cases where you are restricted from putting in certain clauses make the following stipulations void. First of all, any stipulation that a purchaser shall accept a title made with the concurrence of any person entitled to an equitable interest if a title can be made discharged from that equitable interest either under a trust for sale or under the Law of Property Act or under the Settled Land Act. What that means, I take it, is this: Suppose you have a vendor who is a tenant in fee simple but the land is subject to some charge, say a jointure, in the ordinary way if the jointuress is prepared to concur in a deed at the present time, probably that tenant in fee simple would make a contract under which you take the conveyance if the fee simple from him, the jointuress concurring in the deed to release the jointure. Now, that is prevented in future. It is so much more in keeping with the general idea of the Act that the title should be made by the estate owner selling under his powers either as a trust for sale or under the Settled Land Act without the concurrence of this jointuress, that any stipulation which would call upon the purchaser to accept a title made in the other way is rendered void. It is not, perhaps, quite clear what is meant by saying that you must not make a title in that way "where it can be made, discharged from the equitable interest under this Act"—referring to the Law of Property Act. I think that must refer to the power which a vendor has under s. 2 to create a curtain, as I put it. That is to say where there is a fee simple vested in the vendor subject to some outstanding equitable charge, he can vest the land in trustees for sale or create a settlement of it, so as to override that outstanding charge. This section seems to provide that where a vendor is in a position to make a title, in that way a purchaser shall be entitled to insist upon having his title made in that way notwithstanding anything to the contrary in the contract. You will note that all through these sections the vendor must not throw the cost or the extra cost of proceeding in that way on the purchaser. He has to deal with the land in that way by dealing with the legal estate and overriding the charges where possible. He has to bear the cost of doing it in that way—that is to say he cannot throw any further cost on the purchaser.

A good deal of discussion has arisen from the section that I have just mentioned with regard to cases where a person has an estate in fee simple which is subject to some charge charged on other property as well, and he has bought it with the benefit of an indemnity. This section I do not think applies to that at all, because all it says is that a contract that you shall take a title with the concurrence of the person entitled to the charge is void. What you ordinarily do in a case of that kind is you make the contract that the purchaser shall accept the fee simple together with an indemnity in respect of the charge and without the concurrence of the person entitled to the charge. So that I do not think that section at all interferes with the ordinary practice in a case of that kind, though there are other sections, as I have pointed out, where the land may in the circumstances be settled land, and then you must proceed by way of a settlement.

Another provision which is rendered void is any stipulation that a purchaser shall pay the costs of obtaining a vesting order, or the appointment of trustees, or any deed necessary to create the curtain which I have mentioned under s. 2, or that a purchaser shall pay for the getting in of any outstanding legal estate, or that he shall waive the necessity of getting in any outstanding legal estate. That is all in accordance with the principle that I have just mentioned. Again, where there is an agreement for the sale of a mortgaged term—that is to say, a sub-term created by the mortgage a few days shorter than the mortgagor's term—there, in spite of anything to the contrary, the vendor is bound to convey the whole of the fee simple—if the fee simple was comprised in the mortgage as mortgaged—or the whole of the term which is vested in the mortgagor. That is with a view to preventing there being a lot of outstanding terms. The mortgagee has power to sell the whole fee simple, or the whole term of the mortgagor, and he must do it in that way; he must not make a contract that the purchaser shall accept anything else if he is in a position to convey the longer term or the fee.

Then there is a phrase which I know has caused some people to ponder somewhat—that is the provision where there is a contract to sell an equitable estate capable of subsisting as a legal estate. That is not really a very difficult conception. What it means, I think, is this: Supposing that the vendor has an estate in fee simple arising under a settlement—an equitable interest in fee simple—the original settlement perhaps being made on certain persons for life, but by reason of barrings of entail and things of that kind the vendor has become entitled to an equitable interest in fee simple. He has an equitable interest but the fee simple is an estate which is capable of subsisting as a legal estate. Therefore, if he agrees to sell you an equitable interest in fee simple, you could insist, as purchaser, on having the legal estate in fee simple conveyed to you, and that you should not have to pay any extra costs. The sub-section says: "In the case of a contract to sell an equitable estate capable of subsisting as a legal estate the contract shall be deemed to extend to the legal estate"—again another provision with a view to making the vendor make a title relating to the legal estate pure and simple.

A similar provision carrying that rather wider is this, that where there is a contract for the sale of an entailed interest that is to be deemed to extend to the legal estate in fee simple if the vendor is in a position to vest it in the purchaser. In most cases where a person has an equitable interest in fee simple unencumbered, he has power of course to do what we call "bar the entail," or, more accurately, to convey the fee simple. If, therefore, a person purports to sell his equitable estate tail, the purchaser could insist on having the legal estate in fee simple conveyed to him. I should hardly think that would often arise, because a vendor who has got an entailed interest and is going to sell it, would naturally, I should have thought, sell the fee because he would get a better price; but if he, for some reason or other, does it the other way you can make him convey the fee simple. A general provision is put in with regard to that section that a vendor is not to rescind the contract by reason of a purchaser enforcing any of his rights under that clause; he will not be covered by the ordinary rescission clause in the case of a purchaser insisting on some requisition.

Then, under s. 43, the similar provision about getting in legal estates is extended to equitable interests which are protected by registration as a land charge. It says this:—

> "Where there is a sale of land free from certain equitable interests but those equitable interests cannot be overridden by the vendor by reason of their being registered as land charges, the purchaser is entitled to insist, notwithstanding any stipulation to the contrary, that the registration shall be cancelled, or that the person entitled to the charge or equity shall concur in the conveyance without any further expense to the purchaser."

You will notice that that fits in very conveniently with the new method of search by way of alphabetical index which has been introduced by the Land Registrar. It throws on the vendor the obligation of discharging any equitable interests which are registered as land charges and are not capable, therefore, of being overridden by the vendor. There are some, you remember, which can be overridden by a tenant for life, even though registered, but where it cannot be overridden it is the vendor's duty to get them discharged or get the concurrence of the person entitled to them.

Another important provision in s. 44, which I think I have already mentioned, is that the period of title is reduced from forty years to thirty years. That, of course, applies the old rules with the substitution of thirty for forty. As you know, the rule at present is not an absolute forty years' rule, but you must commence your abstract with a good root of title at least forty years' old, subject to certain provisions and exceptions, and that rule still applies though you substitute thirty for forty.

Then, you remember, I mentioned the fact that a purchaser of leaseholds does not get constructive notice of matters which he would have discovered if he had investigated the title to the reversion, in spite of the old decisions to that effect.

Then there is a general provision which says this, that a purchaser is not to be affected with notice of anything which he might have had notice of if he had investigated the title prior to the date agreed for the commencement of the title, unless he actually investigates. Now, that is only really in terms a re-enactment of the old law, though not in the same words. I am not sure that the old law expressly enacts it. I am not at all certain that it does not cover a difficulty which some persons have felt with regard to land charges which are on the register, but which a purchaser investigating the title back to the thirty years' period could not discover. As I have said, it is only going to arise some thirty or forty years hence, but it may very well be, I think, that that section means that although by another section of the Law of Property Act any land charge which is registered is treated as actual notice to all persons, it is overridden by this sub-section which says that where a purchaser begins to investigate the title at the proper date, a good root of title thirty years old, he shall not have notice of anything which he would have discovered by investigating before that date. So that it may be that that provision is wide enough to protect him in that case.

These provisions that I have been dealing with under s. 44 in most cases which are covered by the section apply to contracts made before the 1st January next as well as after. I say "in most cases" because there are one or two exceptions, but there is too much detail for me to go into them now. You will bear in mind, however, that most of those provisions will apply to contracts which are being made now for performance next year, with some exceptions which you will have to look into if the matter ever arises.

Another change that is made with regard to the rights of a vendor and purchaser under a contract is with regard to the production of documents. The rule at present is, of course, that a purchaser cannot demand production of documents which were created or made before the date for the commencement of the abstract. There are some exceptions, however made under the new law of which the most important I think is this, that where an instrument in the abstract is executed under a power of attorney then the purchaser may demand the production of that power of attorney, and there are a few other rather obvious exceptions of that kind.

With regard to the right of the vendor to retain title deeds, a change is made. As you know, at present the rule, roughly speaking, is this: that the vendor may retain title deeds where they relate to any land retained by him. A very wide construction has been given to those words. There are cases which are covered by the new Act where the title deeds no longer relate to any land at all, but the vendor may retain them. That exception is in the case of trust instruments and things of that kind. A trust instrument may originally have applied to land, but all the land may have been sold and converted into money so that the trust instrument no longer relates to land at all, but only to money. In that case it is quite right and proper that the vendor should be able to retain his own trust instrument, because all sorts of questions may arise out of it, and so the exception is extended to trust instruments, appointments of trustees, and one or two similar things, where the trust is still subsisting even though no land may remain subject to the trust.

Then there is a rather interesting section which provides that the Lord Chancellor may publish forms of contracts which are to govern contracts by correspondence. As you know, contracts entered into by correspondence always cause a great deal of trouble; you never quite know whether there is a contract or whether there is not, as a rule, and in any case the parties have entered blindly into an open contract and really do not quite know what the terms are that govern them. Lawyers, to a very large extent, do know what the terms are, but the parties probably do not, and it was thought that it would be rather a good thing to have some rules or conditions made, or a form of contract made, which would apply to those cases. It is rather a curious form of legislation. It enables the Lord Chancellor, as it were, to make a new law for people who are rash enough to make a contract for the sale of land on letters, and these provisions when they are published by the Lord Chancellor will compulsorily apply to contracts by correspondence unless they are expressly excluded. Nobody who is writing letters about buying land will probably know anything about them, and they will very seldom be excluded. When that section was being considered by a committee over which our friend, Mr. Clauson, K.C., presided, there was a desire shown in certain quarters that these conditions should be extended and that the Lord Chancellor should also prescribe certain, what might be called, common forms of conditions of sale to apply generally, if adopted. Of course, there are many local forms adopted by different Law Societies applying to different districts, and it was thought that it might be very convenient to have one comprehensive form which might be called the "National Conditions of Sale" and prescribed by the Lord Chancellor that anybody could adopt. Unfortunately, when one came to look at the terms of the section, the Lord Chancellor was not authorised to do anything of the kind. What has happened instead, I believe, is that that kind of general form has been settled on the instructions of The Law Society, so that there will be a sort of national forms of conditions of sale, or contracts of sale, which in future can be adopted if the parties choose to do so. That, of course, does not come under this section, and it is only voluntary. You may adopt them or not, as you like. But this is a compulsory section and certain provisions apply to persons who are making contracts by correspondence. Now it is very unfortunate for people who are writing letters and making contracts by correspondence who have not any means at the present moment of ascertaining what the terms of those contracts are going to be, because those conditions are not yet published. I made enquiries to-day and I was told that I could have them to-morrow. I see that some people have been more fortunate, perhaps, than myself, and anything I say about those forms must, therefore, be subject to this: that if I can get them to-morrow I may find that I am not exactly accurate in what I say; but I have fairly good reason for supposing that what from my point of view is a prophecy will not be far wrong. You will find, I think, that those conditions of sale, when you can get them, will do nothing very drastic or revolutionary. In fact, it was thought very unfair that you should incorporate into conditions of that kind any clauses which would alter the law in a substantial way or in a way which could in any respect take the parties by surprise. What those conditions will do, as I understand, is they will carry out very much the ordinary common forms that you find in most sets of conditions of sale or contracts of sale. They fix a date for completion, which will be about seven weeks from the date of the contract; they fix the usual place for completion of the contract at the office of the vendor's solicitor; there will be provisions as to what is to happen on completion, the purchaser being entitled to possession; and as to outgoings and rents and profits being apportioned very much in the way in which the ordinary law would provide under an open contract, except that it is all set out in black and white and the parties will be able to see exactly where they stand. Provision also for the apportionment of rates, and things of that kind, is gone into in some detail in a way in which I think is very fair between the parties. Then there will be the usual provisions for the payment of interest on the purchase money—but it will be 5 per cent. I understand—and there are somewhat elaborate provisions with regard to what is to happen in case the completion is delayed. Where the delay occurs for some reason other than the purchaser's fault, he can put his money on deposit at a bank and give notice that he has done it, and then he is only responsible for the interest paid by the bank, if any. On the other hand, if the delay is caused by the wilful refusal of the vendor to deduce a title in the proper way, or any other wilful act or default, then interest ceases altogether. A time is fixed for the delivery of the abstract—fourteen days from the date of the contract. Fourteen days are fixed for objections and requisitions, and subject to those the title is to be accepted. Time is not to be of the essence of the contract; it was thought rather stiff to put that into a contract where the parties have not agreed to it. What has now become the usual power is inserted for the vendor to rescind the contract if the purchaser insists on certain requisitions which the vendor is unable, or on the ground of unreasonable expense is unwilling to remove or comply with. Then provisions are made for the preparation of the conveyance and the delivery of the draft within a certain number of days. Then there is a very valuable clause which is, of course, very frequently put into conditions of sale enabling the vendor to re-sell in case of default on the part of the purchaser after giving certain notice, and what is to happen is carefully provided for. Those provisions, then, will not, I think, alter very seriously the law which applies under an open contract by correspondence, but they will serve to define the position very clearly, and I do not think they will be found to do anything at all unfair to either party.

Another provision which is to be inserted into contracts for sale—not this time compulsorily—is what one might call the "usual clause" in contracts for sale, or conditions, with regard to insurance policies. As it is, one has to put in, or it is advisable to put in, a clause with regard to the vendor holding any policies of insurance on trust or for the benefit of the

purchaser subject to the purchaser paying his proper proportion of the premiums, and subject to the consent of the office. Reading this section hastily one might come to the conclusion that there is a statutory provision that the purchaser shall in any case have the benefit of the insurance. It is only when you get some little way down the section that you realize that the consent of the office is still made a condition, and all that section really does, I think, is to make it unnecessary to put in that usual clause with regard to insurance. It is still necessary to get the consent of the office, and it may be that the mere fact of it being omitted in future may make it more necessary to remind yourselves that that has to be done. One advantage of putting such a clause into a contract is to remind the parties that they have got to do it.

Another provision in a contract which is made void deals with a different point altogether—that is, provisions in contracts for sale which provide that the conveyance is to be prepared by the vendor's solicitor at the purchaser's expense. There, I suppose, the idea is that it is not as a rule a good thing to have the same solicitor acting for vendor and purchaser. One very frequently finds that it is very difficult for him to cut himself into two, and difficult questions of notice arise, and so on. I suppose it was thought that at least a purchaser ought not to have that position thrust upon him; that the lucky solicitor who gets the chance of settling conditions of sale should not be able to exclude all his brethren in the town from having any part of the costs arising out of the transaction. At any rate any such provision in future will be void, and there are some clauses which are framed with a view of preventing this provision from being evaded by making sales by way of demise or sub-demise, and so on. That, however, does not prevent a vendor from offering a form of conveyance which may be used or not by the purchaser as he likes and his being charged a reasonable fee for that form. No doubt it is a very convenient way, particularly in small purchases, to do that occasionally.

Another matter where a change is made departing from a very technical rule of law, and, as I think, doing justice between the parties is this: as you know, the old rule with regard to the deposit was as follows; an action to recover a deposit was an old common law action; you, therefore, must have a common law ground of action before you can get back a deposit. On the other hand, if a purchaser is resisting specific performance, he is claiming an equitable remedy, and the ordinary rules of equity prevail; that is to say, if the vendor has not been very straightforward, or has, perhaps by accident, settled some conditions which are unfair or misleading, the vendor cannot then get the equitable remedy of specific performance, because his conduct has not been altogether equitable—or it would not be equitable for him to do so. Cases occur where a purchaser is able to refuse to complete a contract and resists specific performance on the ground of misleading conditions, although there is no breach of the contract at law. An unfortunate result follows, that although he can refuse to have this doubtful title forced upon him in a case where he has been misled, he is not in a position to get back his deposit. It may be sometimes that would be fair, but in most cases it is very unfair if he is entitled to say, "I have been misled," and the contract is to be off, that he should not be entitled to get back his deposit. That is met by giving the court a discretion. It is s. 49, and, putting it shortly, it gives the court power to order the return of a deposit whenever specific performance is refused, or in fact in any case of an action to recover a deposit. The old technical distinction between the action at law for the recovery of a deposit, and the equitable remedy of specific performance, is wiped away, and the court has the same discretion as to decreeing a return of the deposit as it has already got with regard to enforcing or refusing specific performance.

Another section which affects forms of contracts for sale as well as other documents is what I think ought to turn out a very useful section. It is s. 61 which says that in all deeds contracts and other instruments which are executed after the 1st January next, unless the context otherwise required, certain words shall have certain meanings. The first is that "month" is to mean calendar month. Of course, most ordinary people mean calendar month when they say "month," they do not mean a lunar month. But there is a curious rule of law, subject to a number of exceptions nowadays, that when you say "month," you mean a lunar month. That will be done away with, and it will be no longer necessary to say "six calendar months" when you are drawing a contract relating to months. Again "person" is to include a corporation. That has been so in Acts of Parliament for a long time, but not in ordinary deeds and contracts. Again, the singular is to include the plural and the masculine the feminine. If you make use of these definitions, as I think people should do when they want to make things clear, and particularly in settling common form deeds and mortgages by bearing in mind that section, the drafting can be made much shorter and clearer. It is no longer necessary to say "any person persons or corporation"; that "a mortgagee may appoint any person or persons to be a receiver or receivers." Those sort of clauses you can cut very much shorter, and I think everybody ought to be encouraged to use those expressions where possible. So much, then, for contracts for the sale of land.

We come now to abstracts of title. The chief difference there is that the abstracts of title will be made much shorter, and they will be made shorter partly because less of certain documents will be set out and partly because fewer documents will be required to be set out. As you know, the ordinary rule at present is that every document must be abstracted by which the property has been dealt with—with certain exceptions as to expired leases. But one may put it shortly that the present exception is this: you have to abstract documents which deal with equitable interest, equitable charges, and so on, except in those cases where the equity can be fairly kept off the title because it no longer affects the property or prevents dealing with it free from encumbrances, and is such that in its form it could not possibly affect the legal estate. Therefore, there is no particular point in abstracting it, because a purchaser cannot be affected by it if he knows nothing about it. As you know, there are certain fixed or well-ascertained rules by which you can at the present time keep certain equities off the title. Now, those equities that you can keep off the title in future will be very largely extended, it is done, very shortly, by one section almost. Section 10 of the Law of Property Act says that it shall not be necessary or proper to include in the abstract documents which relate only to interests or powers which will be overreached by the conveyance, and solicitors are protected from liability if they frame the abstracts in that way. Of course, there are cases where an equitable interest will not be overreached. They will chiefly be cases where equitable interests have been registered as land charges; but by reason of that proviso, in a very large majority of cases the abstract will be dealing with deeds relating only to the fee simple estate (except, of course, when you are dealing with leaseholds), and all dealings with equitable interests, life interests or reversions will disappear from the abstract altogether.

Section 110 of the Settled Land Act has a bearing on it, really by way of explaining what is meant by s. 10 of the Law of Property Act. Section 110 says that a purchaser shall not be bound or entitled to call for the production of the trust instrument but is bound to assume, as you remember, that the statements in the vesting deed about the tenant for life and the trustees are correct. The Act then is very brief on that subject, but further assistance is given by certain specimen forms of abstract of title which are set out in the schedule. I do not propose to go through those, but I think it might be useful if I point out the effect of a part of one of them, showing the sort of way in which the abstract is going to be

affected. The first abstract which you find in the schedule deals with this case. It is not explained in the schedule; you have got to work all this out for yourself. What is happening is that a tenant in tail under a settlement has from time to time paid off the prior charges under the settlement and has barred the entail and thus become beneficially entitled to a fee simple and he sells as tenant in fee simple. The abstract is framed in the Act in such a way as to show how that abstract would have been framed before the Act and how it will be framed in the future. I will just summarize quite shortly the facts, because it is easier to show what I mean. It starts by a will in 1897—that is before the Act takes effect—giving a rent charge to one Maria Jones. Subject to that, the land goes to W. Jones for life, and there are other provisions settling the land after that on different persons, including an estate tail to Fred Jones. Now the Act in the schedule shows in italics those parts which will appear in the future. They show the will, the rent-charge, the appointment of trustees, the rent-charge to Maria Jones, the life estate to W. Jones, and nothing after that. All the other provisions are set out in black type showing that in future they will not be needed. There is a note to that, as I think I explained to you, saying that after the commencement of next year it will not be necessary to abstract the will. But, as I think I also explained to you, that note is wrong; it has been left in by accident after certain changes were made in the Act. The will will have to be set out, because it shows who are the trustees and who is the tenant for life. Then in January, 1926, soon after the commencement of the new year, a vesting deed is made vesting the land in W. Jones in fee simple. Of course that will show that he is tenant for life and who are the trustees. Then come various dealings with interests arising under the settlement, a disentailing deed by Fred Jones, and various other things which are quite long all in black type because they will not be wanted in future, showing how the various charges were paid off and disposed of and Fred Jones became tenant in fee simple. All that disappears in future.

The next thing you will see will be that the probate of the will of W. Jones, the tenant for life, is granted to the trustees of the settlement as his special executors. That is a provision in the Act which I am not sure I have mentioned before—that where the tenant for life dies, his executors for the purposes of the settlement must be, whether he appoints them or not, the trustees of the settlement. So that that probate will be set up—not the terms of the will at all, they are quite immaterial but the proof of the will by those Settled Land Act trustees as special executors. Then there will follow the assent of the special executors to the vesting of the land in Fred Jones in fee simple, but they will not state in that vesting assent that there are any trustees. From that you will gather according to the new rules that as no trustees are mentioned in the vesting deed the trusts have come to an end, and that Fred Jones is tenant in fee simple, and he will convey as estate owner having the fee simple. So the abstracts go on in that kind of way, and whenever you get an abstract to prepare after the new year you will be able to use those as a guide. I only refer to that one as showing the sort of way in which abstracts may be very considerably shortened in future. Of course there appear on the abstract all deeds by which the legal estate in fee simple is vested from one person to another and also all legal mortgages and charges by way of legal mortgage, and occasionally an equitable interest which is secured by a registered charge or by a deposit of title deeds. So much then for the form of the abstract.

The next subject I have to deal with to-night is death duties. I am afraid I shall not have time to deal with those at all fully. I will just mention what is the most important part of the provision with regard to death duties. As you know, at the present time, the estate duty becomes a charge on the freehold land—for this reason, because when the Act of 1894 was passed freehold land did not pass to the executor and the executor was made accountable for all property which then passed to him; but as freehold land did not pass to him, the proper proportion of the estate duty became a charge on the land—a charge on all property which did not pass to the executor as such. Again, succession duty, is as you know, a charge on the interest or estate of the successor of the property; hence, if you are investigating a title at the present day, if there have been any deaths recently you have to make requisitions about those estate duties and get receipts and certificates, and so on. In future under s. 16 of the Law of Property Act the personal representative becomes accountable for all death duties payable on the death of the testator in respect of all land which devolves upon him. Of course as you know at the present time all land except copyholds vests in him, and after the new year all the land which belonged to the testator will vest in him, but still there are named cases where estate duty is payable in respect of property which did not belong to the deceased at all. Any property which passes on his death whether belonging to him or not attracts estate duty. In that case the estate owner is made the person accountable for the duty. The sort of case which arises is where a tenant in fee simple has made a deed of gift of some land in fee simple to perhaps his sons or daughters so that it becomes their property and ceases to be part of his estate. Then he dies within the three years. The result of that is that that property is deemed to pass on his death and estate duty will be payable on that. Also the person accountable will be the estate owner, but he is only accountable for duties on his own interest or estate in the land, and any other interests which he can override under his powers under the Settled Land Act or on a trust for sale. None of these changes in any way affects the right of the beneficiaries or imposes any new or altered liability for death duties; nor do they impose any liability on trustees or executors beyond the assets which they will get in their hands. The protection which is given to a purchaser by reason of that change comes, mainly perhaps, from the Land Charges Act. You remember, in dealing with land charges, I told you that a Class D 1 and charge includes death duties. It runs in this way: "A Class D land charge is any charge acquired by the Commissioners for Death Duties leviable or payable on any death which occurs after that Act." Then by s. 13 of the same Act a land charge, Class D—that is the one we are dealing with—created or arising after the Act is void against a purchaser of land unless it is registered. Now that has given rise to a difficulty, because s. 17 of the Law of Property Act does not seem to give quite the same protection—at any rate there is some doubt whether the protection is the same. Section 17 of the Law of Property Act says where a charge is not registered a purchaser of a legal estate shall take free therefrom unless—this is a charge for death duties I am dealing with—unless the charge attached before the commencement of the Act and the purchaser had notice of the facts giving rise to the charge. This is the difficulty which arises: succession duty for certain purposes arises or may be said to attach as soon as the succession is created. Land is granted to A for life with remainder to B; succession duty for certain purposes attaches at once to the property or becomes a liability attaching to something—to B, or whoever it may be—as soon as that succession is created by the deed although the duty will not become payable by B until the death of A. At the present time you have to look out for that kind of thing. Where A and B join together and convey the fee simple, you have to see that the succession duty which will become payable at some future time on the death of A is commuted or otherwise provided for. Otherwise on the death of A it will become a charge on the interest of the successor, B, although a purchaser, has bought it. It appears on the construction of s. 17 that it may very well be that in future you will still have to make requisitions if that kind of thing has happened before the Act comes into effect. That is to say, if before the end of

this year—on looking into an abstract even next year or the year after you find that before the end of this year land has been conveyed by a tenant for life and a remainderman joining together to convey it, you will still have to consider whether succession duty has not become or will not at some time become payable and see whether it has been commuted. I do not think it is quite clear on the Acts whether you are protected or not altogether, because the wording of the Class D land charge only seems to apply to death duties leviable or payable on a death occurring after the Act; and s. 131 talks about a land charge created or arising after the Act being void. They do not contain the same wording as s. 17, and the position is, at any rate, so doubtful that though in future you will be able to disregard all requisitions with reference to death duties and merely rely upon the entries on the register as regards all deaths which occurred after the 1st January next, that will not necessarily cover cases where a tenant for life has joined with a remainderman and conveyed the whole fee simple prior to the 1st January next.

(*Transcript of the Shorthand Notes of The Solicitors' Law Stationery Society, Limited, 104-7, Fetter Lane, E.C.4.*)

Court of Appeal.

No. 1.

Howells *v.* Powell Duffryn Steam Colliery Co.

16th November.

WORKMEN'S COMPENSATION—ACCIDENT TO WORKMAN IN TRAIN CONVEYING HIM TO WORK—TRAIN BELONGING TO EMPLOYERS—COMMENCEMENT OF EMPLOYMENT—WORKMAN IN TRAIN ONLY BY REASON OF EMPLOYMENT—RIGHT TO COMPENSATION.

Where a workman is injured by an accident while being conveyed to his work in a train which is actually the property of his employers, and in which he has no right to be except by virtue of his employment, the employment may be deemed to have commenced and the workman be entitled to compensation, notwithstanding that the use of the train by the workman was not obligatory.

Principles laid down in Stewart & Son *v.* Longhurst, 61 SOL. J. 414; 1917 A.C. 249, *affirming* Longhurst *v.* Stewart & Son, 61 SOL. J. 9: 1916 2 K.B. 803 *followed*, Newton *v.* Guest, Keen & Nettlefolds, 133 L.T. 26, *and* St. Helens Colliery Co. *v.* Hewitson, 68 SOL. J. 163; 1924, A. C. 59 (*where the train was not the property of the employers, distinguished.*

Appeal from a decision of the judge at Glamorgan County Court.

Howells, a miner's boy employed by the Powell Duffryn Colliery was, on 27th August, 1924, riding to his work on a train or coach used by the colliery to convey their workmen up a steep incline to the place where they got their lamps preparatory to descending the shaft, when his leg struck against one of the rollers upon which the cable hauling the coach revolved and was seriously injured. The coach and its appliances and also the land upon which it travelled were the property of the colliery, but it was not obligatory for the workmen to use the coach; it was possible for them to reach the lamp-shed by walking up a path. Upon a claim by Howells for compensation, the judge at Glamorgan County Court indicated that he would be disposed to find for the applicant, but thought that he was bound by the case of *Newton* v. *Guest, Keen & Nettlefolds, supra*, which decided that the employment had not commenced where a workman was injured in or by a train which conveyed him to his work, but the use of which was only optional and for the workman's convenience if he chose to use it. He therefore refused compensation. Howells appealed. The court allowed the appeal.

POLLOCK, M.R., said that in the present case the coach and the track and the plant for hauling the coach up the incline belonged to the respondents, and everything was under their control. When Howells took the coach his only justification was that he was entering upon his employment. The county court judge had felt himself bound by the decisions in *Newton's Case, supra*, and *Hewitson's Case, supra*, but those cases were distinguishable, and did not offer a true guide to the present case. There the trains were not the property of the respondents. The authority to which attention should be paid was the case of *Longhurst* v. *Stewart & Son*, where Pickford, L.J. (1916, 2 K.B. at p. 806), said: "The workman in this case in order to get to the actual place of work had to enter and leave premises on which he had no right to be, and no reason for being, except by the conditions of his employment, and in crossing them to encounter dangers which he would not have encountered but for that employment." In the House of Lords, Lord Dunedin adopted these words (1917, A.C. at p. 257), and Lord Finlay (1917, A.C. at p. 253 said: "The present case belongs to a class of cases where the thing on which the workman is employed is lying in a dock or other open space to which he obtains access only for the purposes of his work. Actual ownership or control by the employer of the spot where the accident occurred is not essential The workman comes there on his way to and from his work, and he may be regarded as in the course of his employment while passing through the dock or other open space to and from the spot where his work actually lies." Here, Howells was in the train only by reason of his employment, and only by right of his employment. The appeal must be allowed, and the case go back to the county court judge to assess compensation.

Lords Justices ATKIN and SARGANT delivered judgments to like effect.

COUNSEL: *Cave*, K.C., and *Macmillan* for Howells; *Wingate Saul*, K.C., and *Lincoln Reed* for respondents.

SOLICITORS: *Smith, Rundell & Co.* for *Morgan, Bruce and Nicholas*, Pontypridd; *Bell, Brodrick & Gray*, for *Kensholes and Prosser*, Aberdare.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re An Application of Brampton Brothers, Ltd.

Tomlin, J. 28th October.

PATENT—COMPTROLLER—REFUSAL TO REGISTER DESIGN—PREVIOUS REFUSAL TO REGISTER SIMILAR DESIGN—NO GOOD GROUND FOR PRESENT REFUSAL—PATENTS AND DESIGNS ACT, 1907, 7 Edw. 7, c. 29, s. 56, and 69 (2)—APPLICATION TO REVIEW DECISION OF COMPTROLLER GENERAL OF PATENTS.

In granting or refusing an application to register a design the fact that it is identical with a design which has already been refused registration is not a good ground for refusal, because the test to be applied is the test of novelty which is to be determined by publication, and also the fact that s. 56 of the Patents and Designs Act, 1907, deals only with refusal by reason of identity with a design already registered to some extent and by inference supports this view.

This was an application for review of the decision of the Assistant Comptroller of Patents. The facts were as follows: The applicants applied on the 31st March, 1925, for registration of two new designs in class 1 relating to tandem bicycles, and numbered 712110 and 712111. The Assistant Comptroller refused the application, and gave a considered decision in writing. One of his reasons for refusing to register was that registration had already been refused in the office to an earlier applicant for practically an identical design and the Assistant Comptroller stated that "It

would seem clear that the previous applicant for registration must, in the absence of any evidence to the contrary, be regarded as the proprietor of the design, and should be allowed registration in view of the fact that his application was filed some months before the present application." The former applicant did not appeal against the decision of the Comptroller's office. These applicants submitted that the fact that a similar design had formerly been refused was no good ground for refusing their application, and they prayed that the court might order that the Comptroller-General should be directed to proceed with the registration of their designs. The Comptroller submitted that it was the practice in the office to refuse such applications on the ground that to grant them would be unfair to the earlier applicant.

TOMLIN, J., after stating the facts, said: The test to be applied is the test of novelty, and novelty is to be determined by publication. There is no publication in regard to the design which has been submitted to the controller for registration and has been rejected by him. There is no difference between that design and the design which any draughtsman might have in his writing-table drawer, and had not disclosed to any other person. Section 69 (2) of the Patents and Designs Act, 1907, 7 Edw. 7, c. 29, provides that "where an application for a design has been abandoned or refused the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Comptroller." And there is this proviso to s. 56: "Provided that where registration of a design is refused on the ground of identity with a design already registered the applicant for registration shall be entitled to inspect the design so registered." That proviso recognizes the principal that if a particular design affords a ground of objection to an application, the applicant on general principles of justice is entitled to know what it is; and as it deals only with a case of a refusal by reason of identity with a design already registered, and not with the case of refusal on the ground of identity with a design refused, it is not an unfair inference that the identity with a design refused is not a ground which the Comptroller can take in considering an application for registration. It is urged that to register the second application will be a hardship on the first applicant, whose application had been refused. That is not a good ground of objection. The first applicant has his remedy. He is free if he is dissatisfied with the decision of the Comptroller to apply to the court to have it corrected. If he does not see fit to do so, he cannot afterwards complain that one who has independently designed something which is identical with his own original idea is able by more active diligence to acquire the rights which he himself had failed to obtain.

COUNSEL: *Trevor Watson; Dighton Pollock.*

SOLICITORS: *G. Beloe Ellis; Solicitor for the Board of Trade.*

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Fagan *v.* Green and Edwards, Ltd.

Horridge, J. 9th November.

CARRIER—CARRIAGE OF GOODS—EXCEPTION OF LOSS BY FIRE—FIRE CAUSED BY NEGLIGENCE OF CARRIERS' SERVANTS—LIABILITY OF CARRIERS.

The plaintiff sued the defendants, who were bailees of the plaintiff's goods, for damages for the loss of those goods by fire while in the course of transit in the defendants' van. The jury found that the fire was caused by the negligence of the defendants' servants. Clause No. 3 of the contract between the parties excepted the defendants from liability for damage by fire. Clause No. 5 stated that the defendants would not in any circumstances be responsible for any article which exceeded £10 in value or for the contents of any package beyond the sum of £10.

Held, that the defendants, as bailees, were only liable for their own or their servants' negligence; that the fire occasioning the damage was caused by their servants' negligence; but that the defendants were not liable to the plaintiff inasmuch as the fire referred to in the exception clause could apply only to a fire which resulted from their or their servants' negligence,

Held, further, that in any event, the plaintiff under the first part of clause 5 could not recover the price of any article exceeding £10 in value, and under the second part, if a packet contained articles of more than £10 in value, not more than £10.

Turner v. *Civil Service Supply Association*, unreported, approved and followed.

Polemis v. *Furness, Withy and Co.*, 1921, 3 K.B. 560, distinguished.

Further consideration of an action tried before Horridge, J., and a special jury.

In April, 1924, the defendants, who were furniture removers and warehousemen, agreed to carry certain goods belonging to the plaintiff from London to Oxford in accordance, as the jury found, with their printed conditions and regulations for the removal of goods, the material clauses of which provided as follows: "3. The company will not be responsible for fire, but will insure goods without delay upon the receipt of written instructions to do so, and the charges will be placed to the credit of the depositor. Goods remain at owner's risk until the receipt for the insurance is delivered. 4. The company will not hold themselves liable for any damage which may arise from lightning, civil commotion, or any act of God; neither will they be resonsible for moth, rust or mildew; nor for leakage or ullage of wines or other liquors, or for deterioration or deficiency happening to articles of a perishable nature. 5. The company will not under any circumstances be responsible for any article which shall exceed the value of £10, and the company will not under any circumstances be responsible for the contents of any chest or chest of drawers, articles of furniture, box or package, unless the same be properly secured to the satisfaction of the company's manager or foreman, nor will they even then be responsible for such contents beyond the sum of £10." The plaintiff's goods were loaded on the defendants' motor-van and on 25th April, 1924, while in course of transit from London to Oxford, the van and the plaintiff's goods were destroyed by fire, due, as the plaintiff alleged, to the negligence of the defendants or their servants. The plaintiff brought an action against the defendants to recover damages for the loss of his goods. The jury found that the van was reasonably fit for the carriage of the goods contracted for, and that the defendants took reasonable care to provide a fit and proper van, but that the defendants' servants were guilty of negligence, and that such negligence caused the fire.

Horridge, J., said there was no contention that the defendants were common carriers. They were bailees, and were only bound to take reasonable care of the goods committed to their charge. It was said that as the defendants could only be held liable for negligence, the first exception relied on, No. 3, must be taken to cover negligence. No special words qualified that exception such as "howsoever caused" or "under any circumstances whatsoever." In all the cases, except where special qualifications were inserted, defendants were, when held liable, in the position of common carriers, and would have been liable for the loss of goods apart from negligence, unless it could have been proved the goods were lost either by the act of God or the King's enemies. In *Travers and Sons, Ltd.* v. *Cooper*, 1915, 1 K.B. 73, the distinction was clearly drawn between the liability of the common carrier and of the bailee as affecting the question of the construction to be put upon an exception clause which had no reference to negligence. The case most directly in point with the present was the recent one of *Turner* v. *Civil Service*

Supply Association, unreported, tried on 28th May, 1925, before Mr. Justice Sankey, and he (Mr. Justice Horridge) saw nothing to distinguish it from the present case. There the clause was: "The contractors are not responsible for loss or damage caused by fire" etc. Mr. Justice Sankey held that as there was no alternative construction to give to that clause than to hold that it applied to negligent fire, he was bound to give that meaning to it, and it protected the carrier. That decision was not affected by *In re Polemis and Furness, Withy and Co, supra*, where the charterer of a vessel was held guilty for the negligence of his servants by which the vessel got on fire, and he was held not to be protected by an exception "the act of God, the King's enemies, loss or damage by fire." In that case the clauses of the charter-party contained exceptions which operated for the benefit of the shipowner and charterer mutually. As the shipowner would not have been protected, it was not possible under the circumstances, to protect the charterer. In the present case, the carriers were excepted from liability because the fire, though caused by negligence, was the only fire which could have been meant by the exception, which covered and protected them. If he was right on the first point, the exception set out in cl. 5 did not arise. But it was quite clear from *Haigh* v. *The Royal Mail Steam Packet*, 1883, 52 L.J. Q.B., 640, that the words, "under any circumstances" covered the negligence of the defendants' servants and protected the defendants. Under the first part of that clause the plaintiff could not recover for the loss of any article exceeding £10, and under the second part, if any package contained articles of more than £10 in value, the plaintiff could not recover more than £10. Judgment would be entered for the defendants.

COUNSEL: *Ernest Charles*, K.C., and *James Wylie*, for the plaintiff; *Cyril Atkinson*, K.C., and *Blanco White*, for the defendants.

SOLICITORS: *Martineau & Reid*, for the plaintiff; *Macdonald and Stacey*, for the defendants.

[Reported COLIN CLAYTON, Esq., Barrister-at-Law.]

Correspondence.

"Solicitors in the Colonies."

Sir,—I should like to make some comments with regard to the article "Solicitors in the Colonies," appearing in your issue of the 3rd October. The statements in the article, which refer to any new-comer intending to start practice on his own account in India, are correct, his chances of getting together a practice and making it a success in competition with the existing old-established firms of lawyers would be extremely slender, but the suggestion that he might establish a practice by "getting on good terms with the natives" is really absurd, the Indian is seldom a paying proposition as a client.

There is, however, a very promising career awaiting any young solicitor who is willing to join any of the existing English firms as an assistant, practically all such firms have vacancies at the present time.

These firms do not depend on Indians for their practice, but on Europeans. It must be remembered that both Calcutta and Bombay are larger towns than any in England, with the exception of London, and that the English commercial interests and capital controlled from these towns are very great indeed.

In Calcutta, especially, the control and management of all the large commercial concerns and factories is European, and so far as one can judge this control is steadily increasing.

Your contributor's statement as to the cost of living in the East is correct, it has increased there since the War, as it has at home, but he goes a little too far when he suggests that it would be necessary for the new-comer to keep "about twenty native servants." This information may possibly have been culled from a perusal of the memoirs of J. A. Hickey, the "Gentleman Attorney" who flourished in Calcutta in the latter part of the eighteenth century. Such a state of affairs does not obtain now, in fact the newly arrived solicitor would probably live in a boarding house, the charge for which would be about Rs. 300 a month, and it would not be necessary for him to employ more than one personal servant on a monthly wage of Rs. 20.

Even the very rich, and heads of the large firms, who, necessarily have to keep up considerable establishments, seldom employ more than eight to ten servants.

Every firm of solicitors in the presidency towns of India have found that during the last few years, there has been, in contradistinction to pre-war times, a considerable disinclination on the part of young solicitors to come out to India. This may be largely due to the fact, that, owing to the profession not being so overcrowded as it was before the war, there are more opportunities of obtaining suitable and congenial employment at home, but it cannot, I think, be correct that every young and energetic solicitor, of more than average ability, is satisfied with his future prospects, and in looking round for an opening that presents better opportunities he may eliminate consideration of a career, say in Calcutta or Bombay, owing to having read or been informed of the contents of the article in your journal.

As in the result your article may serve to deprive some young solicitors of very successful careers, I would suggest that you make some further enquiries from better informed sources, and, after having verified the correctness of my summary of the position, that you should insert an amending article so far as it concerns prospects in the presidency towns in India.

R. W. M

Calcutta,
5th November, 1925.

[We feel very grateful to our correspondent for his first hand information about the prospects of young solicitors in India.—ED.]

Solicitors' Letters: Carbon Copies as Evidence.

Sir,—We are informed that filed carbon copies of solicitors' letters will not be accepted as evidence in the High Court, but can find no note of this in the practice books.

We should be glad if any of your readers could advise us as to this, and if possible give us some authority.

London, W.C. KING & LUDLOW.
24th November.

Obituary.

[Notices intended for insertion in the current issue should reach us on Wednesday morning.]

MR. JAMES FARMER MILNE.

Mr. James Farmer Milne, solicitor, died on the 7th November at Southport at the age of seventy-nine years. He was admitted in 1868 and practised in Manchester, where he was a member of the firm of Messrs. Hinde, Milne & Bury. Mr. Milne was on the Council of The Law Society for many years. He was also a member of the Solicitors' Benevolent Association and of the Manchester Law Association.

MR. JAMES MARSH JOHNSTONE.

Mr. James Marsh Johnstone, solicitor, died in London on Friday, the 20th November, at the age of seventy-five. He was educated at the Manchester Grammar School and was articled to Messrs. W. S. Welsh & Sons, solicitors, of that city. He came to London for the last year of his articles, and on being admitted as a solicitor in 1874 was appointed managing clerk with Messrs. Gregory, Rowcliffe & Co. (now Messrs. Rawle, Johnstone & Co.), of 1, Bedford Row, W.C.1. In the year 1880 Mr. Johnstone joined the firm in partnership, becoming senior partner in the year 1916. He was a member of The Law Society and a director of the Law Fire Insurance Society, Ltd.

Reviews.

Mews' Digest of English Case Law. Containing the Reported Decisions of the Superior Courts and a selection from those of the Scottish and Irish Courts to the end of 1924. Second Edition under the general Editorship of Sir ALEXANDER WOOD RENTON, K.C.M.G., and SYDNEY EDWARD WILLIAMS. Volume VI, County—Custom. London: Sweet & Maxwell, Ltd., Stevens & Sons, Ltd., and The Solicitors' Law Stationery Society, Ltd.

Volume VI of Mews' gives in short, pithy and accurate paragraphs the facts and decisions in cases affecting, *inter alia*, "County Courts," "Court," "Covenant," "Criminal Law," "Crown," and "Custom." Such interesting and important subjects as "Criminal Information" and "Criminal Law" occupy some 1,200 columns of the present volume. The arrangement of the cases given in Mews' is greatly to be commended; it enables the practitioner easily and conveniently to get at all the cases bearing upon a particular matter. Thus in the present volume, cases upon Criminal Law are grouped under four main general headings: (A) Persons, Liability of; (B) Offences generally; (C) Particular Offences; and (D) Procedure and Practice. There are sub-headings to each of these; for example under "Particular Offences," we have "(Offences) Against the Property of Individuals," etc., until at last we have all cases, say, upon "Larceny," coming together in a proper scientific sequence. The result is that in Mews' one can discover or re-discover cases when one has a vague notion of the subject with which they deal, and it ceases to be indispensable for one to overload one's memory with the names of cases.

We can confidently recommend Mews' Digest to the earnest consideration of our readers.

Books Received.

"*The Parliament House*," 1925-26. W. Green & Son, Ltd., 2 and 4, St. Giles-street, Edinburgh. 21s.

A History of English Law. W. S. HOLDSWORTH, K.C., D.C.L., Vinerian Professor of English Law in the University of Oxford, Fellow of All Souls College, Oxford, late Fellow of St. John's College, Oxford, Foreign Associate of the Royal Belgian Academy, Fellow of the British Academy. Vols. VII and VIII. Methuen & Co. Ltd., 36, Essex-street, W.C. 25s. per volume.

Death Duties and Life Assurance. R. D. ANDERSON, F.A.I. The Insurance News, 11, Queen Victoria-street, E.C.4. 1s.

The Bench and The Dock (Illustrated). CHARLES KINGSTON. Stanley Paul & Co., Ltd., 8, Endsleigh Gardens, Upper Woburn-place. 12s. 6d.

Law and Practice of Estate Duty. 6th edition. Embodying the relevant parts of the Finance Acts, 1894 to 1925, the Death Duties (Killed in War) Act, 1914, the Law of Property Act, 1925, and other Acts affecting the Duty; with cases, Rules of Court, &c. Sir ALFRED W. SOWARD, C.B., in collaboration with HAROLD C. SCOTT, LL.B. London. Waterlow & Sons, Ltd., London Wall and Birchin-lane. 12s. 6d.

Gibson's Conveyancing. Twelfth Edition. H. GIBSON RIVINGTON, M.A., Oxon., and A. CLIFFORD FOUNTAINE. Law Notes Publishing Offices, 25-26, Chancery-lane, W.C.2. (1925). £2.

Wolstenholme and Cherry's Conveyancing Statutes (in Two Volumes). Eleventh Edition. By Sir BENJAMIN LENNARD CHERRY, LL.B., one of the Conveyancing Counsel of the Court, JOHN CHADWICK, M.A., LL.B., and J. R. P. MAXWELL, Barristers-at-Law. Vol. I. Stevens & Sons, Ltd., 119-120, Chancery-lane. £4.

Societies.

To Secretaries.—**Reports of meetings, lectures, etc., to ensure insertion in the current number, should reach the office not later than 10 a.m. Wednesday.**

Joint Board of Legal Education for Wales.

The annual meeting of the Joint Board of Legal Education for Wales was held in The Law Society's Hall, London, on Saturday, the 21st ult. The President (His Honour Judge Ivor Bowen) occupied the chair, and there was a large attendance, including the principals of the University Colleges of Cardiff and Swansea, Professor Levi, of the University College, Aberystwyth, Major Wheldon (the Registrar of the University College, Bangor), Mr. A. C. Macintosh (Hon. Secretary of the Cardiff Law Society), and Mr. A. M. Ingledew (Cardiff), and a number of other Welsh solicitors. The following officers were appointed for the coming year: President, His Honour Judge Ivor Bowen; Vice-President, Mr. A. C. Macintosh (Cardiff); Hon. Treasurer, Mr. D. Stanley Owen (Swansea); Hon. Secretary, Mr. F. Llewellyn-Jones (Mold).

Reports as to the work of the Law Schools connected with the several University Colleges were submitted and received. The Hon. Secretary reported that The Law Society had intimated that a grant of £1,150 would be made to the Board in respect of the current session. It was resolved that representations be made to The Law Society urging the increase of the grant, having regard to the increased number of students in attendance at the classes.

Upon the proposition of Mr. F. Llewellyn-Jones, seconded by Mr. A. M. Ingledew, it was unanimously resolved that a special committee be appointed to consider the whole question of the teaching of law in Wales, and to report as to the manner in which the Joint Board could assist in the matter.

The special committee will consist of the officers of the Board, representatives of the University Colleges, and a number of practising solicitors from different parts of Wales.

Gray's Inn.

An Entrance Scholarship at Gray's Inn (£80 a year for three years) has been awarded to Mr. John P. Tyrie, of Glasgow University and Balliol College, Oxford.

Sheffield and District Law Student's Debating Society.

A very interesting debate was held on Tuesday, 24th ult., in the Law Library, Bank-street; when the chair was taken by Mr. D. P. Mosby (Honorary member), eighteen other members being present.

The subject for discussion was the Law Notes Moot for November which is as follows:—

"Mrs. Ambler has lent £500 to her husband for use "in his business. In the event of his dying insolvent after "the Administration of Estates Act, 1925 has come into "operation, will Mrs. Ambler, on proving his will, of which "she is appointed the executrix, have a right to pay herself "the £500 in full before she pays any of his ordinary "debts?"

Mr. L. S. Hiller, seconded by The Hon. Secretary, (Mr. P. B. Dingle, opened in the affirmative, and Mr. L. J. Burton, seconded by Mr. G. A. Bolsover, in the negative.

On the debate being thrown open, the motion was carried by ten votes to seven.

Rules and Orders.

THE SUPREME COURT FEES (AMENDMENT) ORDER, 1925.

DATED 6TH NOVEMBER, 1925.

The Lord Chancellor, the Judges of the Supreme Court, and the Treasury, in pursuance of the powers and authorities vested in them respectively by section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925, and sections 2 and 3 of the Public Offices Fees Act, 1879, and of every other power enabling us in this behalf, do hereby, according to the provisions of the above-mentioned enactments respectively authorise and require them, make, advise, concur in and consent to, the following Order :—

1. The Schedule to the Supreme Court Fees Order, 1924, shall be amended as follows, viz. : in Fee No. 33 (relating to the entering or sealing of a judgment without an order) the expression " £50 " in the First Column shall be omitted, and the expression " £10 " shall be substituted therefor.

2. This Order may be cited as the Supreme Court Fees (Amendment) Order, 1925, and shall come into operation on the 1st day of January, 1926 ; and the Supreme Court Fees Order, 1924, shall have effect as amended by this Order.

Dated the 6th day of November, 1925.

Cave, C.

Legal News.

Appointments.

[Notices intended for insertion in the current issue should reach us on Wednesday morning.]

Mr. GEORGE BIRCH, solicitor, of the firm of Messrs. Birch and Birch, Lichfield, has been appointed a Notary Public. Mr. Birch, who was admitted in 1896, is acting Registrar of the County Court.

Mr. ROBERT G. F. HILLS, solicitor (Messrs. Ravenscroft, Woodward & Co., 15, John Street, Bedford Row), a director of the British Law Insurance Company, Ltd., since 1903, has been elected Deputy Chairman of that Company in place of the late Mr. C. G. Kekewich. Mr. WILLIAM ASTELL KAYE, B.A., solicitor (Messrs. Trinder, Kekewich & Co., 2, Suffolk Lane, Cannon Street), has been elected a director of the aforesaid Company.

Wills and Bequests.

Mr. David Fraser Douglas, of Stourton Ford, Ilkley, Yorks, formerly of Leeds, retired solicitor, who died on 20th August, aged sixty-six, left estate of the gross value of £27,515. He left £500 to Ada Nicholson ; £300 to his chauffeur, Frederick Nicholson ; £50 to his gamekeeper, C. Fawcett ; and £400 to Mary Harrison, if respectively still in his service at his death. To the curator of Clifton College Library and Museum, " Birds of the British Islands," by Lord Lilford, and his collection of British birds' eggs and cabinet.

Mr. William Coward (ninety), of Buckingham-gate, Westminster, S.W., of the Inner Temple, barrister-at-law, and of the Royal Western Yacht Club, Plymouth, left estate of the gross value of £3,007.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'n'd'y Dec 7	Mr. More	Mr. Hicks Beach	Mr. Ritchie	Mr. Synge
Tuesday .. 8	Jolly	Bloxam	Synge	Ritchie
Wednesday 9	Ritchie	More	Ritchie	Synge
Thursday.. 10	Synge	Jolly	Synge	Ritchie
Friday 11	Hicks Beach	Ritchie	Ritchie	Synge
Saturday .. 12	Bloxam	Synge	Synge	Ritchie

Date.	Mr. Justice Astbury.	Mr. Justice Lawrence.	Mr. Justice Russell.	Mr. Justice Tomlin
M'n'd'y Dec. 7	Mr. Jolly	Mr. More	Mr. Hicks Beach	Mr. Bloxam
Tuesday .. 8	More	Jolly	Bloxam	Hicks Beach
Wednesday 9	Jolly	More	Hicks Beach	Bloxam
Thursday.. 10	More	Jolly	Bloxam	Hicks Beach
Friday 11	Jolly	More	Hicks Beach	Bloxam
Saturday .. 12	More	Jolly	Bloxam	Hicks Beach

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement. Thursday, 17th December, 1925.

	Middle Price. 2nd Dec.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 2½%	55½xd	4 10 0	—
War Loan 5% 1929-47	100⅜	4 19 6	4 19 6
War Loan 4½% 1925-45	94⅞	4 15 0	4 18 0
War Loan 4% (Tax free) 1929-42 ..	100¼	4 0 0	4 0 0
War Loan 3½% 1st March 1928 ..	97 9/16	3 12 0	4 17 6
Funding 4% Loan 1960-90	86⅜	4 12 6	4 13 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93	4 6 0	4 8 0
Conversion 4½% Loan 1940-44 ..	95 5/16xd	4 14 0	4 17 0
Conversion 3½% Loan 1961	75½	4 13 0	—
Local Loan 3% Stock 1921 or after ..	63¾xd	4 14 0	—
Bank Stock	250	4 16 0	—
India 4½% 1950-55	88½	5 2 0	5 4 0
India 3½%	67¼xd	5 4 0	—
India 3%	58¼xd	5 3 0	—
Sudan 4½% 1939-73	95¾	4 14 0	4 17 0
Sudan 4% 1974	86¼	4 12 6	4 17 0
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	80¼	3 15 0	4 10 6
Colonial Securities.			
Canada 3% 1938	82xd	3 13 6	4 18 0
Cape of Good Hope 4% 1916-36 ..	91½	4 7 6	4 19 6
Cape of Good Hope 3½% 1929-49 ..	79xd	4 7 6	5 0 6
Commonwealth of Australia 4½% 1940-60	97xd	4 17 6	4 19 0
Jamaica 4½% 1941-71	93½	4 16 6	4 17 0
Natal 4% 1937	91⅞	4 7 0	4 19 0
New South Wales 4½% 1935-45 ..	91½xd	4 18 6	5 3 6
New South Wales 4% 1942-62	82xd	4 17 6	5 1 0
New Zealand 4½% 1935-45	95	4 16 0	4 19 6
New Zealand 4% 1929	95¾	4 3 6	5 1 0
Queensland 3½% 1945	76½xd	4 11 6	5 8 6
South Africa 4% 1943-63	87	4 12 0	4 15 0
S. Australia 3½% 1926-36	84½	4 3 0	5 8 6
Tasmania 3½% 1920-40	83xd	4 4 0	5 2 0
Victoria 4% 1940-60	83⅞	4 15 6	4 19 0
W. Australia 4½% 1935-65	91xd	4 19 0	4 19 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	63xd	4 15 0	—
Bristol 3½% 1925-65	76	4 12 0	5 0 0
Cardiff 3½% 1935	87xd	4 0 6	5 2 6
Croydon 3% 1940-60	68	4 8 0	5 1 0
Glasgow 2½% 1925-40	76½	3 5 0	4 11 0
Hull 3½% 1925-55	77½	4 10 0	4 19 0
Liverpool 3½% on or after 1942 at option of Corpn.	73½xd	4 15 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52½	4 15 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63	4 15 0	—
Manchester 3% on or after 1941 ..	64	4 13 6	—
Metropolitan Water Board 3% 'A' 1963-2003	64½	4 13 0	4 14 0
Metropolitan Water Board 3% 'B' 1934-2003	64½	4 13 0	4 14 0
Middlesex C.C. 3½% 1927-47	81½	4 6 0	4 19 6
Newcastle 3½% irredeemable	74½	4 14 0	—
Nottingham 3% irredeemable	62½	4 15 6	—
Plymouth 3% 1920-60	68½	4 8 0	4 19 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge ..	99½	5 1 0	—
Gt. Western Rly. 5% Preference ..	93½	5 7 0	—
L. North Eastern Rly. 4% Debenture ..	78½	5 2 0	—
L. North Eastern Rly. 4% Guaranteed	74½	5 7 6	—
L. North Eastern Rly. 4% 1st Preference	68½	5 17 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	78	5 2 0	—
L. Mid. & Scot. Rly. 4% Preference ..	72¾	5 10 0	—
Southern Railway 4% Debenture ..	80	5 0 0	—
Southern Railway 5% Guaranteed ..	98	5 2 0	—
Southern Railway 5% Preference ..	91	5 10 0	—